

**83-849**

**FILED**

**NOV 23 1983**

**ALEXANDER L. STEVAS,  
CLERK**

\_\_\_\_\_  
**NO.**  
\_\_\_\_\_

**THE SUPREME COURT  
OF THE UNITED STATES**

\_\_\_\_\_  
**OCTOBER TERM, 1983**  
\_\_\_\_\_

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,*  
  
**versus**  
  
**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

\_\_\_\_\_  
**On Writ of Certiorari to the  
United States Court Of Appeals for the Eleventh Circuit**  
\_\_\_\_\_

\_\_\_\_\_  
**PETITION**  
\_\_\_\_\_

**ARCH STOKES  
C. DAVID JOHNSTON  
STOKES, LAZARUS & WATSON  
3711 Roswell Road  
Atlanta, GA 30042  
Attorneys for Petitioner**

---

NO.

---

**THE SUPREME COURT  
OF THE UNITED STATES**

---

OCTOBER TERM, 1983

---

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,*

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

---

**QUESTIONS PRESENTED FOR REVIEW**

**Questions Addressed to the Supervisory Power of the Court**

Whether the NLRB decision is contrary to the law and facts, requiring denial of enforcement, as being arbitrary and capricious and a misapprehension or gross misapplication of the standard for unit determinations (*Golden State Bottling Co., Inc. v. NLRB*, 340 U.S. 474 (1951)), to wit:

**A.** The unit selected by the NLRB is totally inappropriate for the highly integrated HYATT luxury, convention hotel,

where—

(1) The unit selected for HYATT by the NLRB in 1981 is inconsistent with:

- The prior unit determination at this HYATT;
- The collective bargaining pattern and practice at other major hotels in New Orleans;
- The history of hotel unit determinations in NLRB Region 15;
- All other representation proceedings at HYATT Hotels in the Southeastern United States;
- All other unit determinations at all other HYATTs throughout the United States which do not have collective bargaining relationships;
- Collective bargaining agreements at all HYATTs throughout the United States which do have collective bargaining agreements;
- The consistent and unified labor relations policies of HYATT throughout all union and non-union hotels in the United States;
- All hotels and hotel associations in major U.S. cities engaged in collective bargaining;

and where—

(2) There are no distinct, shared interests among employees in the unit certified which are not shared by *all* employees of HYATT.

**B.** The NLRB violated the Administrative Due Process Rights of HYATT and its employees by:

(1) Reversing the prior "all employee" unit determination at HYATT where there was no change in any of the facts except for the person occupying the position of

Regional Director;

- (2) Failing to follow the prior unit determination at the same HYATT Hotel as the Board has done at other HYATTs;
- (3) Departing from its standard of following prior unit determinations at the same hotel as applied throughout the hotel industry;
- (4) Disenfranchising 850 employees at HYATT previously accorded their right to vote under 29 U.S.C. § 157.

### Questions Presenting Conflict Among the Circuits

1. Whether there is an established policy of "all employee" units (single unit representation) for manual employees in highly integrated hotel operations consistent with *Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347 (1968), except where there is a well defined area bargaining practice to the contrary.

A. **Yes:** *Atlas Hotels, Inc. v. NLRB*, 519 F.2d 1330 (9th Cir. 1975); *Ramada Inns, Inc. v. NLRB*, 487 F.2d 1334 (9th Cir. 1973); *Westward-Ho Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971).

B. **No:** *Hyatt Hotels Corporation, d/b/a Hyatt Regency New Orleans v. NLRB*, the case *sub judice*.

C. Other circuits have found to the contrary in other hotel/motel cases, but have not been required to decide the issue in a highly integrated luxury, convention hotel such as HYATT. *Holly's Inc. d/b/a Holiday Inn South*, 653 F.2d 238 (6th Cir. 1981).

2. Whether the NLRB must assign a relative weight to each of the competing factors it considers, analyzed in light of the policies underlying the "community of interest" test, and support its appraisal of the significance of each factor.



**A. Yes:** *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153 (5th Cir. 1980).

**B. No:** *Hyatt Hotels Corporation, d/b/a Hyatt Regency New Orleans v. NLRB*, (11th Cir. No. 82-8146), the case *sub judice*.

### **Important Question of Federal Law**

Whether a unit of less than all manual employees in a highly integrated luxury, convention hotel such as HYATT violates the intent and purpose of the National Labor Relations Act.

### **LIST OF ALL PARTIES TO THE PROCEEDINGS**

The following is a complete list of all parties to the proceedings in this case:

- (1) Hyatt Regency New Orleans
- (2) Hyatt Hotels Corporation
- (3) United Labor Unions
- (4) National Labor Relations Board

## TABLE OF CONTENTS

	PAGE
Questions Presented For Review .....	i
List of All Parties to the Proceedings .....	iv
Table of Contents .....	v
Table of Authorities .....	viii
References to Opinions and Orders in Courts and Administrative Agencies Below .....	1
Grounds on which the Jurisdiction of this Court is Invoked .....	5
Statutes Involved in this Case .....	5
Statement of the Case .....	6
Statement of the Facts .....	6
1. Hyatt's Organization .....	7
2. Functional Integration .....	7
3. Employee Skills and Cross-Utilization .....	9
4. Wages, Hours and Conditions of Work .....	9
5. Collective Bargaining Patterns and History .....	12
Basis For Federal Jurisdiction .....	13
Argument and Citation of Authority .....	13
THE NLRB DECISION IS CONTRARY TO THE LAW AND FACTS, AND THE NLRB ORDER SHOULD BE DENIED ENFORCE- MENT .....	13

1. *The Unit Selected by the NLRB is Inappropriate and Exceeds its Statutory Limits of Discretion* .....13
  - a. The Board's decision is inconsistent with every unit determination and collective bargaining unit applicable to luxury, convention hotels in general, and HYATT in particular .....13
  - b. There are no distinct, shared interests among employees in the unit certified which are not shared by all employees of HYATT .....18
2. *The NLRB Violated the Administrative Due Process Rights of HYATT and its Employees* .....23
  - a. The NLRB reversed the prior HYATT unit determination in violation of its own administrative decisions, and the NLRB's reversal cannot withstand the judicial scrutiny of this Court .....23
  - b. HYATT employees determined to be within the appropriate unit in 1977 were not permitted to vote, even by challenged ballot, in the 1981 election .....24

THERE IS AN ESTABLISHED POLICY OF "ALL EMPLOYEE" UNITS CONSISTING OF ALL MANUAL OPERATING EMPLOYEES IN HIGHLY INTEGRATED LUXURIOUS, CONVENTION HOTELS SUCH AS HYATT .....25

THE NLRB MUST ASSIGN A RELATIVE WEIGHT TO EACH OF THE COMPETING FACTORS IT CONSIDERS, ANALYZED IN LIGHT OF THE POLICIES UNDERLYING THE "COMMUNITY OF INTEREST" TEST, AND SUPPORT ITS APPRAISAL OF THE SIGNIFICANCE OF EACH FACTOR .....	27
Conclusion .....	28
Certificate of Service .....	30
Appendix.....	A-1
1. Order of the United States Court of Appeals for the Eleventh Circuit, Granting Enforcement of the Order of the National Labor Relations Board, Dated June 21, 1983 .....	A-1
2. Order of the United States Court of Appeals for the Eleventh Circuit Denying Petition for Rehearing and Suggestion for Rehearing <i>en banc</i> , Dated August 25, 1983 .....	A-2
3. Statutes Involved in this Case .....	A-3

## TABLE OF AUTHORITIES

CASES:	PAGE
<i>Allied Chemical &amp; Alkali Workers of America v. Pittsburgh Plate Glass Co.</i> , 404 U.S. 157 (1971) .....	26
<i>Arlington Hotel Company, Inc.</i> , 126 NLRB 400 (1960) .....	13, 25
<i>Atlas Hotels, Inc. v. NLRB</i> , 210 NLRB No. 86, (1974), enforced, 519 F.2d 1330 (9th Cir. 1975) .....	iii, 26
<i>Baltimore Transit Co.</i> , 92 NLRB 688 (1950) .....	23
<i>Golden State Bottling Co., Inc. v. NLRB</i> , 414 U.S. 168 (1973) .....	28
<i>Holly's Inc. d/b/a Holiday Inn South</i> , 242 NLRB No. 28 (1978) enforced, 653 F.2d 238 (6th Cir. 1981) .....	iii, 26
<i>Hotel Admiral Semmes</i> , 127 NLRB 988 (1960) .....	12, 17
<i>Hotel Equities, d/b/a The Regency Hyatt House</i> , 171 NLRB 1347 (1968) .....	iii, 1, 15
<i>Hyatt Hotels, Inc. d/b/a Hyatt Regency Phoenix</i> , 256 NLRB 1099 (1981), enforced, 692 F.2d 673 (9th Cir. 1982) .....	17
<i>Hyatt Regency New Orleans</i> 260 NLRB No. 66 (1982) .....	4
<i>Hyatt Regency New Orleans v. NLRB, et al.</i> No. 81-2482 (E.D. La., dismissed, July 8, 1981) .....	3
<i>Ilikai, Inc., and Association of Owners Ilikai Apartment Building</i> , 148 NLRB 1264 (1964) .....	14
<i>John Hammonds and Roy Winegardner, Partners d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant</i> , 160 NLRB 927 (1966), en- forced, 387 F.2d 646 (4th Cir. 1967) .....	14

	PAGE
<i>Montgomery Ward &amp; Co.</i> , 87 NLRB 254 (1949) .....	23
<i>NLRB v. Alterman Transport Lines, Inc.</i> , 465 F.2d 950 (5th Cir. 1972) .....	23
<i>NLRB v. J.C. Penney Co.</i> , 559 F.2d 373 (5th Cir. 1977) .....	24
<i>NLRB v. Purnell's Pride, Inc.</i> , 609 F.2d 1153 (5th Cir. 1980) .....	19, 24, 26, 27
<i>National Carloading Corp.</i> , 167 NLRB 801 (1967) .....	23
<i>Ramada Inns, Inc. v. NLRB</i> , 487 F.2d 1334 (9th Cir. 1973) .....	iii, 26
<i>Sensenich Bros.</i> , 55 NLRB 506 (1944) .....	23
<i>Westward-Ho Hotel Co. v. NLRB</i> , 437 F.2d 1110 (9th Cir. 1971) .....	iii, 26

#### STATUTES:

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 88 Stat. 395, 29 U.S.C. §§151, <i>et seq.</i> ):	
Section 7 .....	5
Section 9(b) .....	5
Section 9(c)(5) .....	5
Section 10(f) .....	5, 13

#### ADMINISTRATIVE CASES:

<i>The Civic Center Motor Hotel Ltd., d/b/a Birmingham Hyatt House</i> , NLRB Case No. 10-RC-10682 (1976) .....	17
<i>Holiday Inns, Inc., d/b/a Holiday Inn Memphis— Rivermont</i> , NLRB Case No. 26-RC-4698 (1974) .....	24

<i>Hotel Equities, d/b/a The Regency Hyatt House,</i> NLRB Case No. 10-RC-7169 (1967) .....	15
<i>Hyatt Corporation, d/b/a Hyatt Lake Tahoe,</i> NLRB Case No. 20-RC-12749 (1975) .....	17
<i>Hyatt Hotels Corporation, d/b/a Hyatt Regency</i> <i>Memphis, NLRB Case No. 26-RC-6418 (1981) .....</i>	17
<i>Hyatt Corporation, d/b/a Hyatt Regency</i> <i>New Orleans, NLRB Case No.</i> <i>15-RC-6147 (1977) .....</i>	1, 2, 12, 17, 18
<i>Hyatt Regency New Orleans, NLRB Case No.</i> <i>15-RC-6771 (1981) .....</i>	2
<i>Hyatt Corporation, d/b/a Orlando Hyatt House,</i> NLRB Case No. 12-RC-5112 (1976) .....	16
<i>Hyatt Corporation, d/b/a Orlando Hyatt House,</i> NLRB Case No. 12-RC-5344 (1977) .....	16, 24

## BOOKS:

R. GORMAN, BASIC TEXT ON LABOR LAW (1976) .....	19
A. STOKES, THE COLLECTIVE BARGAINING HANDBOOK FOR HOTELS, RESTAURANTS, AND INSTITUTIONS (CBI Publishing Co., Boston 1981) .....	16

## REFERENCES TO OPINIONS AND ORDERS IN COURTS AND ADMINISTRATIVE AGENCIES BELOW

On July 12, 1977, a petition was filed with Region 15 of the National Labor Relations Board [hereinafter referred to as the Board or NLRB] by the Hotel, Motel & Restaurant Employees, Local No. 166, AFL-CIO, and the International Union of Operating Engineers, Local No. 226, AFL-CIO, seeking to represent some, but not all, of the employees at the Hyatt Regency New Orleans [HYATT]. Hearings on that petition, NLRB Case No. 15-RC-6147, were held during which HYATT introduced substantial documentary and testimonial evidence regarding the functional integration and community of interests of all employees at HYATT.

On September 9, 1977, Regional Director Charles M. Paschal, Jr., issued his Decision and Direction of Election finding that the appropriate unit at HYATT for collective bargaining purposes included:

All full-time and regular part-time employees, including banquet, beverage, concierge, convention services, engineers, housekeeping, kitchen, laundry/valet, PBX, restaurant, roomservice, service department, Stadium Club, and steward employees.<sup>1</sup>

That unit was patterned after the unit of all manual operating employees found appropriate by the Board at the Hyatt Regency Atlanta [*Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347 (1968)], a unit which has maintained a long collective bargaining history and still exists at the Hyatt Regency Atlanta.

---

<sup>1</sup> Hereinafter referred to as the 1977 unit. *Hyatt Corporation, d/b/a Hyatt Regency New Orleans*, NLRB Case No. 15-RC-6147 (1977).



On March 16, 1981, the United Labor Unions, Local 100 [hereinafter ULU], filed a petition with Region 15 of the Board for a representation certification election as the collective bargaining representative *only* for housekeeping and laundry/valet employees at HYATT.

During the unit determination hearings HYATT introduced into evidence the *entire record* of the hearings in NLRB Case No. 15-RC-6147, including the complete transcript and exhibits utilized by HYATT to demonstrate the functional integration and community of interest of all HYATT employees. Thus, all evidence Regional Director Charles M. Paschal, Jr., utilized in making his 1977 decision was introduced and reviewed without objection in 1981.

Furthermore, HYATT introduced evidence which updated all exhibits from the date of the 1977 hearings to 1981. This included documentary evidence of functional integration and cross-utilization, as well as testimony of all individuals in key supervisory positions since the opening of the Hotel: General Manager, Executive Assistant Manager—Rooms, Executive Housekeeper, and Personnel Director.

On May 26, 1981, Regional Director Fred A. Lewis, the new Regional Director for Region 15, issued his decision which excluded most employees included in the 1977 unit. Similar to the petition of ULU, the 1981 unit included only:

All full-time and regular part-time employees in the employer's housekeeping, laundry/valet, concierge and bell staff departments.<sup>2</sup>

On June 4, 1981, HYATT petitioned the Board for review of the appropriateness of this unit. This case consisted of a 717-

---

<sup>2</sup> Hereinafter referred to as the 1981 unit. [VII:923], see note 7.

page transcript and 37 exhibits. HYATT's request was denied without explanation by mailgram on June 19, 1981.

On June 16, 1981, HYATT requested that all employees in the 1977 unit be permitted to vote in the 1981 election, even if by challenged ballot. Regional Director Lewis denied this request on June 17, 1981.

On June 18, 1981, HYATT filed a complaint for a temporary restraining order, preliminary and permanent injunction seeking to permit all employees in the 1977 unit to vote, even by challenged ballot.<sup>3</sup> At the June 20, 1981, hearing on the temporary restraining order the NLRB presented its mailgram Order of June 19, 1981. At the July 1, 1981, hearing on the preliminary injunction, the NLRB's motion to dismiss the complaint for lack of jurisdiction was granted, thus delaying judicial review until the filing of this Petition for Review by HYATT.

On June 30, 1981, a Supplemental Hearing was held by Regional Director Lewis, who issued his decision on July 13, 1981, maintaining the same 1981 unit. HYATT petitioned for review of this decision on July 21, 1981. Following a July 29, 1981, notification of the election by Regional Director Lewis, the Board issued a mailgram denial of HYATT's Petition for Review on August 4, 1981.

On August 11, 1981, an election was held at the office of Regional Director Lewis in which a majority of the ballots cast in the 1981 unit were for representation by ULU, with none of the 1977 unit employees being permitted to vote. On September 21, 1981, ULU was certified as the collective bargaining representative of the 1981 unit over the objection of HYATT.

---

<sup>3</sup>*Hyatt Regency New Orleans v. National Labor Relations Board, et al.*, Case No. 81-2482 (E.D.La., dismissed, July 8, 1981).

Subsequently, ULU demanded that HYATT engage in collective bargaining with ULU over the 1981 unit. HYATT refused, *as refusal was the only means to contest the Board's decision*. The Board then issued an unfair labor practice complaint in NLRB Case No. 15-CA-8351-2 on November 16, 1981. On February 26, 1982, the NLRB granted the summary judgment motion of its General Counsel and issued its Order, requiring HYATT to bargain collectively with ULU over the 1981 unit.<sup>4</sup>

HYATT petitioned the United States Court of Appeals for the Eleventh Circuit in the most expeditious manner provided by law to seek review of the arbitrary and factually unsupported Order of the NLRB, pursuant to 29 U.S.C. §160(f). Oral argument was held on March 24, 1983.

On June 21, 1983 the panel hearing the case issued its decision granting enforcement of the NLRB Order.<sup>5</sup> HYATT petitioned for Rehearing and for Rehearing *En Banc* on July 11, 1983, which was denied on August 25, 1983.<sup>6</sup>

---

<sup>4</sup>*Hyatt Regency New Orleans*, 260 NLRB No. 66 (1982).

<sup>5</sup>See Appendix A-1. Honorable Charles R. Scott, U.S. District Judge for the middle district of Florida, was a member of the panel that heard oral argument, but due to his death on May 12, 1983, did not participate in this decision.

<sup>6</sup>See Appendix A-2

## **GROUND ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED**

The Order granting enforcement of the Order of the National Labor Relations Board was issued by the United States Court of Appeals for the Eleventh Circuit on June 21, 1983 (App. at A-1.)

HYATT petitioned for rehearing and for rehearing *en banc* on July 11, 1983. Rehearing was denied by Order of the United States Court of Appeals for the Eleventh Circuit on August 25, 1983. (App. at A-2.)

The statutory provisions believed to confer upon this Court jurisdiction to review the judgment or decree in question by writ of certiorari are as follows: 28 U.S.C. §1254 (1); 28 U.S.C. §1651; 28 U.S.C. §2101; 28 U.S.C. §2106.

## **STATUTES INVOLVED IN THIS CASE**

The statute involved in this case is the National Labor Relations Act, as amended, Sections 7, 9(b) and 9(c)(5). 29 U.S.C. §§157, 159(b), and 159(c)(5), as set out at Appendix A-3.

## STATEMENT OF THE CASE

This is a case involving the determination of an appropriate collective bargaining unit for HYATT.

In 1977 the NLRB found an "all-employee" unit appropriate at HYATT. This was consistent with *every* prior Board decision affecting *every* luxury convention hotel in America, including *every* HYATT.

In 1981 a new Regional Director completely reversed the 1977 unit. The Board then conducted an election in the gerrymandered unit, thereby disenfranchising 850 HYATT employees permitted to vote in 1977.

The Board may not reverse a prior unit determination absent a showing of substantial change. Further, *every* NLRB unit determination must be supported by substantial evidence in the record. HYATT's overwhelming and totally un rebutted evidence precludes such inappropriate Board action.

### Statement of the Facts

HYATT is a high quality, luxury, convention hotel, which is the fourth largest HYATT in the United States (R.37:6), and the second largest hotel of any kind in the Southeast. R.32:2.<sup>7</sup> HYATT employs approximately 1100 employees (R.31:14) to service 1200 guest rooms (R.31:16), three restaurants and three lounges and over 50,000 square feet of banquet, conference and exhibition space. HYATT EX.s 1, 2, 4.

---

<sup>7</sup>The transcript of the representation proceeding is found in VOLUME I of the record, and references to it will be cited as R. \_\_\_\_:\_\_\_\_, indicating the page and line. HYATT Exhibits are found in VOLUMES II-VI and will be cited as HYATT EX. \_\_\_\_\_. References to the pleadings in VOLUME VII will be shown as VII:\_\_\_\_, indicating the page number.

HYATT is physically connected to the Louisiana Superdome, the largest enclosed public assembly facility and sports arena in the world (R.31:8), which hosts many athletic events, shows and conventions. R.30:13. Approximately 80% of HYATT's business is convention-oriented. R.29:11; 249:13; 549:8.

HYATT is a 32-story hotel (R.29:30), centered around an expansive atrium lobby (R.30:5), conducive to contact among all employees and guests of HYATT. R.385:2-8.

### *1. HYATT's Organization*

All HYATT employees work under the same general manager. R.38:5. The 4 departments which the NLRB found to be within the unit in this case — housekeeping, laundry/valet, bell staff and concierge — share common supervision with 3 other departments in the Rooms Division-PBX, front desk and reservations. R.38:14-18; 248:1-4. The complete organizational structure of HYATT is depicted in CHART 1.

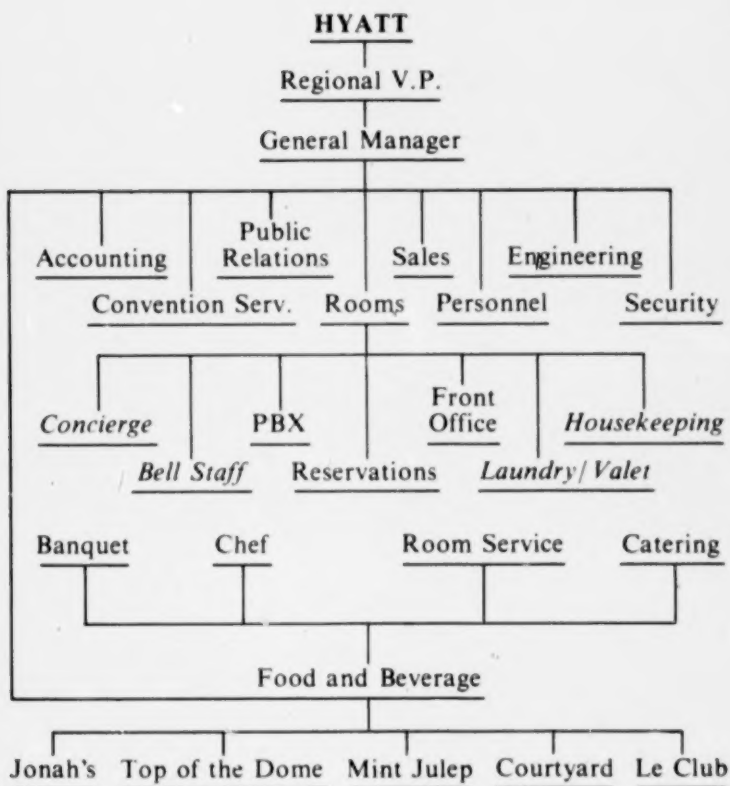
### *2. Functional Integration*

Housekeeping employees perform room service functions by regularly removing trays and dishes from the guest rooms, corridors and elevators. R.173:6-13; 295:12-19; 383:1-8. Engineering employees also perform this function. R.396:17-25. All employees regularly perform the cleaning function of housekeeping throughout the hotel. R.173:15-20; 413-414. Housekeeping and laundry employees sit in and help out PBX. R.441-442.

Front office employees perform room inspections for the housekeeping staff. R.132:15-23. Housekeeping employees regularly deliver departure notices to guest rooms for the front office employees and are frequently in contact with reservations employees. R.420-421.

# CHART 1

## HYATT Organizational Structure<sup>8</sup>



<sup>8</sup>HYATT EX. 3; those departments found by the NLRB to be in the 1981 unit are in italics.

The housekeeping storeroom supplies items for the convention services and room service departments, a situation unique even with HYATT. R.360-361. The laundry department provides uniforms to all the other employees on a daily basis. R.182:5-7.

Functional integration of all employees is considered essential to the operation of HYATT in order to maintain its standards of excellence in guest service demanded by its clientele. R.251-252; 317-318. This is reflected in a "whatever it takes" attitude of all employees (R. 397-398) which exists throughout all HYATT hotels. R.414-415.

### *3. Employee Skills and Cross-Utilization*

The skill requirement at the entry level positions is the same throughout the Rooms Division. R.270:20-21. All employees from all departments go through the same orientation program together. R.67-68. The *HYATTRAIN* program is available to all employees and is designed to cross-train employees in jobs throughout HYATT to support cross-utilization and promotion from within HYATT. R.566; 581-583.

Between August 4, 1977 (the date of the hearing in the 1977 case) and March 18, 1981, there were 4,125 instances of temporary job transfers by employees between departments of sufficient duration to be documented by the personnel department. HYATT EX. 18. Only 25 occurred within the 1981 unit, while 690 occurred into or out of the 1981 unit—629 of which involved the food and beverage department. *Id.*; VI:977. Testimony proved at least 10,000 undocumented temporary job transfers per year. R.579; 593-594.

### *4. Wages, Hours and Conditions of Work*

Virtually every HYATT non-supervisory employee is paid on an hourly basis and is required to sign in and out. R.63;



HYATT EX. 8. The method for offering overtime to employees does not vary from one department to another. R.69:11. All employees have the same report-in pay policy. R.68:21. All employees receive the same annual wage reviews, at the same time. R.65:12-19. All employees are paid on the same payday. HYATT EX. 8.

All employees are subject to the same progressive discipline procedures (R.65:2), and all have access to the general manager through the same Open Door Policy. R.68:12; HYATT EX. 4.

All employees are given the same Employee Handbook and the same benefit brochures. R.41. All fringe benefits are the same for all employees of HYATT. R.59-60. All employees are subject to the same personnel policies, practices and procedures. *Id.*; HYATT EX. 8.

#### 5. *Collective Bargaining Patterns and History*

There is no history of collective bargaining at this HYATT. However, there is a prior unit determination in which the Board found an overall unit appropriate. *Hyatt Corporation d/b/a Hyatt Regency New Orleans*, NLRB Case No. 15-RC-6147 (1977).

The collective bargaining patterns at other hotels in New Orleans establish only an "all-employee" unit is appropriate. HYATT EX. 20 (Fairmont and Bourbon Orleans hotels). The longstanding practice in Region 15 is to grant an overall unit in a hotel (as distinguished from a motel).<sup>9</sup> Collective bargaining patterns in *all* other major luxury, convention hotels throughout the U.S. prove only an overall unit is appropriate. *Id.*, CHART 3, *infra*.

---

<sup>9</sup> *Hotel Admiral Semmes*, 127 NLRB 988 (1960).

These and many other facts are more graphically depicted in CHART 2 which compares the 1981 unit to the other units and employees.

### **Basis For Federal Jurisdiction**

The United States Court of Appeals for the Eleventh Circuit had jurisdiction to review and set aside the Order of the National Labor Relations Board pursuant to Section 10 (f) of the National Labor Relations Act, as amended. 29 U.S.C. §160(f).

### **ARGUMENT AND CITATION OF AUTHORITY**

**The NLRB Decision Is Contrary to the Law and Facts, and the NLRB Order Should Be Denied Enforcement.**

**1. *The Unit Selected by the NLRB Is Inappropriate and Exceeds Its Statutory Limits of Discretion.***

- a. The Board's decision is inconsistent with every unit determination and collective bargaining unit applicable to luxury, convention hotels in general, and HYATT in particular.**

Shortly after it took jurisdiction of the hotel industry, the Board established the rule it would follow in arriving at an appropriate hotel unit. In *Arlington Hotel Company, Inc.*, 126 NLRB 400, 404 (1960), the Board stated:

. . . [I]n the hotel industry, all operating personnel have such a high degree of functional integration and mutuality of interests that they should be grouped together for collective-bargaining purposes.

**CHART 2**  
**There Are No Distinct Interests Not Shared By All HYATT Employees<sup>10</sup>**

DEPARTMENTS	COMMUNITY OF INTEREST FACTORS	SALARY RANGE	INTERCHANGE WITH OTHERS	ENTRY LEVEL SKILLS	PHYSICAL CONTACT	UNIFORMS	NAME TAGS	COMMON SUPERVISION	ORIENTATION	HYATT TRAIN	OUT TRAINING	MANUAL SKILLS	PROVIDE GUEST SERVICE	FRINGE BENEFITS	PERSONNEL POLICIES	HOURLY WAGES	TIPPED	TIP CREDIT	FUNCTIONAL INTEGRATION WITH OTHERS	EMPLOYEE CAFETERIA	EMPLOYEE LOCKER ROOM	TIME CLOCK	INDIVIDUAL DEPT. HEADS	EMPLOYEE H. BOOK	PUBLIC CONTACT/ GUEST COMMENTS	PAY DAY	PROMOTION FROM WITHIN (TO ANY OTHER DEPARTMENT)	DISCIPLINARY SYSTEM	EMPLOYEE REVIEW	HYATT I.D. CARDS	EMPLOYEE ENTRANCE	REGENCY HYATT UNIT	1977 HYATT UNIT	1981 HYATT UNIT
ACCOUNTING																																		
BANQUETS																																		
BELL STAFF			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CATERING																																		
CHEF																																		
CONCIERGE			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CONVENTION SERVICE																																		
COURTYARD																																		
ENGINEERING																																		
FRONT DESK																																		
HOUSEKEEPING		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
JONAH'S																																		
LAUNDRY/VALET		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
LE CLUB																																		
MINT JULEP																																		
PRX																																		
PERSONNEL																																		
PUBLIC RELATIONS																																		
RESERVATIONS																																		
SALES																																		
SECURITY																																		
TOP OF THE DOME																																		
CITATION OF AUTHORITY		HYATT EX. 37	HYATT EX. 16, 17, 18	R. 270	R. 121-134, 293, 385, 420, 441	R. 61-62	R. 59-60, 63	R. 249; HYATT EX. 3	R. 66-67	R. 581-583; HYATT EX. 36	VII: 926	<i>The Regency Hyatt House, at 1347</i>	R. 252, 266-269	R. 60	R. 60	R. 63-64	R. 386, 695, 711	HYATT EX. 20	HYATT EX. 19, 21-34	R. 121-122	R. 293	R. 69, 293	HYATT EX. 3	R. 66; HYATT EX. 4	R. 364	HYATT EX. 8	R. 64; HYATT EX. 4	R. 65	R. 65	R. 65	R. 69	<i>The Regency Hyatt House, at 1347</i>	HYATT EX. 20	VII: 923

<sup>10</sup> See Statement of Facts and citations in ARGUMENT AND CITATION OF AUTHORITY, referring to all non-supervisory employees. "X" or "a"

means "same" or "included." The departments included in the smaller 1981 unit are in italics.

The Board continued the application of this rule of inclusion of all operational employees of a hotel, unless a bargaining history of the hotel or the area warranted exclusion. *Ilikai, Inc., and Association of Owners, Ilikai Apartment Building*, 148 NLRB 1264 (1964).

The mid-1960's saw the rise of interstate highways and motel chains. In its bureaucratic effort to pigeonhole the new motel industry into an existing industry, the Board lumped all hospitality facilities into one set of standards. Thus, after six years the Board diluted the *Arlington* case in *John Hammonds and Roy Winegardner, Partners d/b/a 77 Operating Company d/b/a Holiday Inn Restaurant*, 160 NLRB 927 (1966) [herein after *Holiday Inn Restaurant*], by stating:

*Arlington* took a valid principle (if functions and mutual interest are highly integrated, an overall unit alone is appropriate) and fashioned from it an inflexible rule to be applied to all hotels and motels. But, because our experience has indicated that such a high degree of integrated functions and employee interest does not exist in every hotel or motel,<sup>13</sup> we shall hereafter consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees.

*Id.*, at 930. (Emphasis supplied.)

Thus, the Board provided a vehicle to carve out a smaller than "all employee" unit in a motel where the community of interest factors so indicate.<sup>11</sup> However, the Board continued to group "all operating personnel" together for collective bar-

---

<sup>11</sup>"A business may operate in such a manner as to depend substantially on other than room guests. Here, for example, the restaurant corporation also provides club rooms and banquet facilities. Nor does it seem that the motel provides complete restaurant facilities primarily for its relatively few room guests." *Holiday Inn Restaurant*, at 929.

gaining purposes where they had a "high degree of integrated function and employee interest" in a hotel.

In 1967, the Hyatt Regency Atlanta opened as the first Hyatt Regency Hotel and the flagship of Hyatt Hotels Corporation. In 1968, the Board had the opportunity to render its landmark decision in *Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347 (1968) [hereinafter referred to as *The Regency Hyatt House*].

At issue was the inclusion or exclusion of office clerical personnel from a unit consisting of all operating employees of the hotel. *The Regency Hyatt House* Board found an "overall unit to be appropriate"<sup>12</sup> and clearly acknowledged that, in *Holiday Inn Restaurant*, it did not reverse its policy of including all manual operating employees in an overall unit in such a highly integrated hotel as HYATT. Rather, it stated its intention was "to weigh and balance all factors in arriving at a unit determination."<sup>13</sup>

The Regional Director's "unit determination" in *The Regency Hyatt House* attempted to discount evidence of nationwide practices.<sup>14</sup> The Board, on the other hand, found such evidence significant. Furthermore, the NLRB held the hospitality industry evidence controlling as to the inclusion of job categories in the unit.<sup>15</sup> Thus, the Board continued to apply the nationwide principle of "all employee" units in the luxury hotel industry, particularly as applied to HYATT and Hyatt Regency hotels.

---

<sup>12</sup>*The Regency Hyatt House*, at 1359.

<sup>13</sup>*Id.*, at 1348.

<sup>14</sup>*Hotel Equities, d/b/a The Regency Hyatt House*, NLRB Case No. 10-RC-7169, at p. 6, n.22. HYATT EX. 20.

<sup>15</sup>*The Regency Hyatt House*, at 1349, n.8.

Another HYATT in the Southeast provided the backdrop for the most thoroughly litigated hotel unit determination in America prior to the instant case. *Hyatt Corporation, d/b/a Orlando Hyatt House*, NLRB Case No. 12-RC-5112 (1976); *Hyatt Corporation, d/b/a Orlando Hyatt House*, NLRB Case No. 12-RC-5344 (1977) [hereinafter *The Orlando Hyatt House*].

There are at least 20 significant similarities between the *Orlando Hyatt House* (1977) and this case. See VII: 777-779. However, the facts in the two *Orlando Hyatt House* cases remained the same and the Regional Director of Region 12 always found an "all-employee" unit appropriate.<sup>16</sup>

The evidence adduced at the unit determination hearing in the instant case demonstrated the following:

- (1) The established Board precedent in the United States is to have an "all-employee" unit in a major luxury, convention hotel or resort;
- (2) All hotels and hotel associations in major U.S. cities engaged in collective bargaining have "all-employee" units;<sup>17</sup>
- (3) HYATT has numerous collective bargaining agreements throughout the United States, *all* of which,

---

<sup>16</sup>The facts in the *Orlando Hyatt House* (1977) are identical to those in the instant case, and the decision of the Regional Director for Region 12 is worth reading and considering in light of the facts in the instant case. See VII: 775-776.

<sup>17</sup>Atlanta, Atlantic City, Baltimore, Boston, Chicago, Cincinnati, Detroit, Honolulu, Indianapolis, Jacksonville, Kansas City, Las Vegas, Los Angeles, Miami, Minneapolis, New Orleans, New York, Philadelphia, San Diego, San Francisco, Seattle, Washington, D.C. HYATT EX. 20. See generally A. Stokes, *THE COLLECTIVE BARGAINING HANDBOOK FOR HOTELS, RESTAURANTS, AND INSTITUTIONS* (CBI Publishing Co., Boston, 1981).

consistent with its labor relations policies, are "all-employee" units;<sup>18</sup>

- (4) Other HYATTs throughout the United States which do not have collective bargaining relationships, have been the subject of representation proceedings in which *only* "all-employee" units have been found by the Board;<sup>19</sup>
- (5) *All* other representation proceedings at HYATT Hotels in the Southeastern United States (Alabama, Florida, Georgia, Louisiana and Tennessee) have resulted in "all-employee" units;<sup>20</sup>
- (6) The history of unit determinations at hotels in Region 15 is to find *only* "all-employee" units;<sup>21</sup>
- (7) The collective bargaining experience at other major hotels in New Orleans has produced *only* "all em-

---

<sup>18</sup> Hyatt Regency Atlanta, Hyatt Riviera (Atlanta), Cherry Hill Hyatt House, Hyatt Regency Dearborn (Detroit), Hyatt Regency San Francisco, Hyatt on Union Square, Hyatt Regency Waikiki (which is in the same bargaining unit as the Ilikai Hotel, *supra*).

<sup>19</sup> Hyatt Lake Tahoe [*Hyatt Corporation, d/b/a Hyatt Lake Tahoe*, NLRB Case No. 20-RC-12749 (1975)]; Hyatt Regency Memphis [*Hyatt Hotels Corporation, d/b/a Hyatt Regency Memphis*, NLRB Case No. 26-RC-6418 (1981)] and all HYATTs listed *infra*, note 20. In the case of *Hyatt Regency Phoenix*, 256 NLRB 1099 (1981), *enforced*, 692 F.2d 673 (9th Cir. 1982), the Board granted a petition for unit of craft employees to a craft union. 29 U.S.C. §159(b).

<sup>20</sup> Hyatt Regency Atlanta [*The Regency Hyatt House*] 1968; Birmingham Hyatt House [*The Civic Center Motor Hotel Ltd., d/b/a a Birmingham Hyatt House*, NLRB Case No. 10-RC-10682 (1976)]; Orlando Hyatt House (1976, 1977), *supra*; Hyatt Regency New Orleans (1977), *supra*, Hyatt Regency Memphis (1981) note 23, *supra*.

<sup>21</sup> *Hotel Admiral Semmes*, 127 NLRB 988 (1960) (Case No. 15-RC-2108); *Hyatt Hotel Corp. d/b/a Hyatt Regency New Orleans*, NLRB Case No. 15-RC-6147 (1977).



ployee" units;<sup>22</sup> and

- (8). The prior collective bargaining unit at *this* HYATT was an "all-employee" unit.<sup>23</sup>

The NLRB's decision is logically inconsistent within itself, and it is based upon factually dissimilar and illogical "precedent." Moreover, the NLRB's decision is inconsistent with every unit determination and collective bargaining unit applicable to luxury, convention hotels in general, and HYATT in particular.

- b. There are no distinct, shared interests among employees in the unit certified which are not shared by all employees of HYATT.**

It is the duty of the Board through its Regional Directors to "consider each [representation] case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees." *Holiday Inn Restaurant*, at 930. The following factors were either not considered by Regional Director Lewis, or considered incorrectly on the facts of the case and not distinguished from facts relevant to other employees at HYATT or facts found to be the same in the 1977 unit determination:

**1. Collective Bargaining History.** Regional Director Lewis failed to discuss or analyze any collective bargaining patterns impacting upon HYATT, including: the 1977 unit determination; prior hotel unit determinations in Region 15; collective bargaining patterns at similar hotels in New Orleans; similar

---

<sup>22</sup> *Bourbon Orleans, Ltd., Collective Bargaining Agreement; Fairmont Hotel Collective Bargaining Agreement.*

<sup>23</sup> *Hyatt Corporation d/b/a Hyatt Regency New Orleans*, NLRB Case No. 15-RC-6147 (1977), patterned after the unit in *The Regency Hyatt House*.



units in HYATT throughout the United States; patterns of collective bargaining at HYATTs throughout the United States; and patterns of collective bargaining throughout the major luxury, convention hotel industry in the Southeast and the United States. Such analysis is required. *NLRB v Purnell's Pride, Inc.*, 609 F.2d 1153 (5th Cir. 1980).

**2. Determination of Labor Relations Policy.** Employees throughout all departments and divisions at HYATT are affected by the same labor relations policy which cannot be compartmentalized. Moreover, many of these policies are HYATT policies corporatewide. See generally R.59-60; HYATT EX.s 4, 8, 13, 36.

**3. Continuity of Production Processes.** The overall concept of total-guest-service at a major luxury, convention hotel is one of the most important distinguishing features of HYATT, and yet was completely ignored by the Regional Director. The record evidence is overwhelming that employees in the 1981 unit are but a part of the overall continuity of *total-guest-services* at HYATT. *No individual, department, or division could function without the contribution and total functional integration of all employees from all departments and divisions.* See R.184, 249, 252, 317-318, 414, 549.<sup>24</sup>

**4. HYATT's Organizational Structure.** HYATT's organizational structure is such that all employees share only one common supervisor—the General Manager. The unit found by the Regional Director does not comport with the organizational structure of the employer. HYATT EX. 3; CHART 1, *supra*.

**5. Manual Operating Employees.** The Regional Director included housekeeping and laundry/valet employees (failing to compare bell staff and concierge employees) on the basis of per-

---

<sup>24</sup> Factors 2-3 are considered substantial issues relating to the "community of interest." R. Gorman, BASIC TEXT ON LABOR LAW 69 (1976).

formance of "simple manual tasks." However, the Board has consistently described an appropriate unit for HYATT as consisting of "all manual operating employees," including those "preparing or serving food or beverages." *The Regency Hyatt House*, at 1349.

**6. Benefits and Personnel Policies, Practices and Procedures.**

The Regional Director only stated that the 1981 unit employees shared in the same fringe benefits. VII:926. The record evidences that *all* non-supervisory employees at HYATT share in the same benefits *and* the same personnel policies procedures. R.59-60; HYATT EX. 8.

**7. Orientation and Training.** The Regional Director found that only "certain" employees attended HYATTRAIN courses. VII:925. However, the only evidence is that *all employees* may participate in such training programs, as well as other educational assistance programs (R.581-583), and that these unit employees who participated in such programs benefitted from them. R.564-566.

The Regional Director also found that *all* employees participated in a "general orientation program at the time of hire," attending same with employees from *all other departments*, and that *all* employees are specifically trained for their positions "by means of on-the-job training and mandatory monthly meetings." VII:926

**8. Uniforms.** The Regional Director found that "[h]ouse-keeping employees wore distinctive departmental uniforms...." VII:929. However, *all* manual employees in the departments found to be within the unit, as well as in *all* other departments, wear distinctive uniforms. R-61. Name tags are also worn by *all* HYATT employees. R.59-60, 63.

**9. Common Supervision.** The Regional Director distinguished the 1981 unit from all other employees based upon "separate supervision." VII:929. However, each of the four

departments within the unit has "separate supervision." Further, the only common supervision shared by the departments in the units is that of the Executive Assistant Manager, Rooms, who supervises the other departments. CHART 1, *supra*. The next level of common supervision of all these employees is the General Manager, who supervises all HYATT employees. R. 554.

**10. Method of Computation of Wages.** The Regional Director gave similarity in the method of computation of wages as a basis for his determination. VII:929. However, almost all non-supervisory employees are paid on an hourly basis. R.63; CHART 2. Moreover, bell staff employees, like many employees in the food and beverage departments, are tipped employees and are paid less than the minimum wage based upon a tip credit.

**11. Physical Contact and Areas of Work.** The unique physical structure of HYATT establishes physical contact between housekeeping and other employees not normally found in other hotels. R.385. All employees at HYATT have daily contact with each other throughout the Hotel, whether in the employee cafeteria, employee locker room, common employee timeclock, or moving about through the Hotel. Moreover, some employees in the 1981 unit have greater contact with employees outside the unit than with other employees within the unit.

**12. Functions and Functional Integration.** The Regional Director found "a close functional integration between housekeeping, laundry/valet, concierge and bell staff departments" but did not find such functional integration between the 1981 unit and other departments. VII:925. However, the "voluminous" un rebutted facts and documents of HYATT on this point were neither weighed nor analyzed. Moreover, the testimonial evidence is replete with examples of functional integration among *all departments*, not just within the NLRB's 1981 unit.

**13. Skills.** The Regional Director referred to both housekeeping and laundry/valet employees as being "unskilled" em-

ployees. VII:925, 926. Yet he made no correlation between these employees and either (a) other employees in the 1981 unit (bell staff and concierge), or (b) other HYATT employees, particularly in the rooms division, all of whom have identical skills. R.270.

**14. *Interchange of Employees.*** The Regional Director found infrequent interchange or transfer between the 1981 unit departments and other departments. VII:925. However, there were 4,125 documented temporary transfers at HYATT between the 1977 and 1981 unit determinations, 715 of which involved the 1981 unit. Fully 97% of the transfers involving the 1981 unit were into and out of the 1977 unit—the vast majority involving Food and Beverage. HYATT EX. 18.

**15. *Low Wage Workers.*** The Regional Director stated: "Housekeeping personnel are among the lowest paid hourly workers . . ." VII:926. However, he did not discuss whether this "fact" distinguished housekeeping employees from other employees either within or with out the 1981 unit. However, the "highest hourly wage" in the housekeeping and laundry/valet departments is as high, or higher, than the highest hourly wage in all other HYATT departments. When housekeeping personnel are compared to others on a basis of medium income they are more highly paid than most employees both in and out of the 1981 unit. HYATT EX. 37.

Therefore, there are no distinct, shared interests among the employees in the 1981 unit which are not shared by all HYATT employees, who would, *a fortiori*, be included in an appropriate bargaining unit. Only an "all employee" unit consisting of all manual operating employees would be consistent with history practice, the stated Board position regarding Hyatt Regency Hotels, and the facts particular to this HYATT.

**2. The NLRB Violated the Administrative Due Process Rights of HYATT and Its Employees.**

- a. The NLRB reversed the prior HYATT unit determination in violation of its own administrative decisions, and the NLRB's reversal cannot withstand the judicial scrutiny of this Court.**

In 1977 the Board found an appropriate unit at HYATT to be an "all-employee" unit patterned after the unit at the Hyatt Regency Atlanta. The 1981 decision by Regional Director Lewis found a totally different unit to be appropriate for collective bargaining purposes at HYATT, completely altering the prior unit determination.

"Absent sufficiently compelling reasons therefore, the Board will not override a prior unit determination." *National Car Loading Corp.*, 167 NLRB 801, 803, (1967) (emphasis supplied). Otherwise stated, the Board, as a matter of policy, will not alter a prior unit determination absent *compelling circumstances*. *Baltimore Transit Co.*, 92 NLRB 688 (1950). Even though a prior unit determination is not conclusive, that prior determination will be given greater weight in later representation proceedings. *Montgomery Ward & Co.*, 87 NLRB 254 (1949); *Sensenich Bros.*, 55 NLRB 506 (1944).

The Eleventh Circuit did not address the multitude of factual errors by the Regional Director and cited *NLRB v. Alterman Transport Lines, Inc.*, 465 F.2d 950 (5th Cir. 1972), for the proposition that a "redetermination of material facts" could be made by the Board after the passage of a number of years. However, in *Alterman* the Court required the Board to set out a detailed opinion containing its reasons for including or excluding each class of employees in question. *Id.*

Further, the Board policy of upholding prior unit determinations has been not only recognized by the Courts but followed in the hospitality industry. In *Holiday Inns, Inc., d/b/a Holiday*

*Inn Memphis—Rivermont*, NLRB Case No. 26-RC-4698 (1974), the Board cited *National Carloading Corp.*, *supra*, with approval in finding an "all employee" unit based upon a prior "all employee" unit determination at the same facility.

In an identical case involving the Orlando HYATT the Board has applied this policy to HYATT. *Hyatt Corporation d/b/a Orlando Hyatt House*, NLRB Case No. 12-RC-5344 (1977), Appendix A-8.

While it is well recognized that the Board has broad discretion in making a unit determination, such determination may not be "arbitrary, capricious and an abuse of discretion, or lacking in substantial evidentiary support." *NLRB v. J.C. Penney Co.*, 559 F.2d 373, 375 (5th Cir. 1977). The Regional Director's decision in this case is totally lacking in the *substantive analysis* required by the Courts. *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153 (5th Cir. 1980).

**b. HYATT employees determined to be within the appropriate unit in 1977 were not permitted to vote, even by challenged ballot, in the 1981 election.**

Although the Board has been given administrative authority and discretion over determining the appropriate bargaining unit, the principles governing unit determinations require that this authority be used to "assure to employees the fullest freedom in exercising the rights guaranteed by this Act . . ." 29 U.S.C. §159(b). *See also, NLRB v. Corry Foam Products Co.*, 489 F.2d 807, 808 (6th Cir. 1973).

These rights include the right to vote. 29 U.S.C. §157. Thus, while it is recognized that employees have the right to engage in concerted activities, it is often overlooked that they also have the right to refrain from such activities. Fundamental to these rights is the right to vote by secret written ballot.

Commensurate with these rights, HYATT has sought throughout these proceedings not to disenfranchise employees, as the Board has to some 850 individuals. Since the avoidance of disenfranchisement is the major policy behind the Board mandate not to set aside a prior unit determination at a particular hotel absent "compelling circumstances" or "substantial reasons," HYATT sought to permit those given the right to vote in 1977, to vote in 1981, even pleading that the Board preserve their Section 7 rights by the challenged ballot procedure. 29 U.S.C. §157.

**There Is an Established Policy of "All Employee" Units Consisting of All Manual Operating Employees In Highly Integrated Luxurious, Convention Hotels Such As HYATT.**

The first hospitality case addressed by the NLRB presented the issue of an appropriate unit for collective bargaining purposes in a highly integrated hotel operation. The facts in the instant case are virtually identical to the facts in *Arlington Hotel Company, Inc.*, 126 NLRB 400 (1960), wherein the Board stated, at 403:

. . . some employees whom the Petitioner would include are under the same supervision as some it would exclude.

. . .

*Further, there is a high degree of cooperation among all the employees and integration of all the departments, in the common goal of serving the hotel guests . . . . All employees, moreover, work in the same building, are centrally hired, and share in the same fringe benefits.*

(Emphasis supplied.)

In attempting to apply this standard to the motel industry in

*Holiday Inn Restaurant* the Board did not change this policy, it merely permitted itself the luxury of examining the facts in each particular case to accommodate a smaller unit in a motel operation. Indeed, the Board continued to find only "all employee" units in highly integrated hotel operations, and specifically designated such a unit in *The Regency Hyatt House*, which it had consistently followed at other Hyatt Hotels including the 1977 units at HYATT.

At least one Circuit Court of Appeals has continued to follow this established policy, notwithstanding *Holiday Inn Restaurant*, unless there is a well defined area bargaining practice to the contrary. *Atlas Hotels, Inc. v. NLRB*, 519 F.2d 1330 (9th Cir. 1975); *Ramada Inns, Inc. v. NLRB*, 47 F.2d 1334 (9th Cir. 1973); *Westward-Ho Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971).

Other circuits have addressed this issue, but only in motel or nonintegrated hospitality operations where the facts demonstrated a situation totally different from HYATT's highly integrated luxury, convention operation. *Holly's Inc. d/b/a Holiday Inns South*, 653 F.2d 238 (6th Cir. 1981).

The determination of an appropriate bargaining unit is necessary to affectuate the statutory policy of efficient collective bargaining. *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). As the Court stated in *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153, 1156 (5th Cir. 1980):

"... The designation of a small unit that excludes employees with common skills, attitudes, and economic interests may unnecessarily curtail the union's bargaining power and may generate destructive factualization and end fighting among employees."

What the Board did in this case was to carve out a unit similar to that requested by the petitioning union in violation of 29



U.S.C. §159(c)(5), and contrary to the facts in this particular case and the standard previously applied by the Board to HYATT.

**The NLRB Must Assign a Relative Weight to Each of the Competing Factors It Considers, Analyzed in Light of the Policies Underlying the "Community of Interest" Test, and Support Its Appraisal of the Significance of Each Factor.**

The "community of interest" among employees is crucial to the determination of an appropriate bargaining unit. At least one Circuit in our case has required such a *substantive analysis* where the Regional Director's decision in our case failed to weigh and analyze the facts in the case, making "stock" statements commonly used in such decisions, to carve a small unit as petitioned for by the union out of a larger integrated operation. *NLRB v. Purnell's Pride, Inc.*, 609 F.2d 1153 (5th Cir. 1980). The statement of the Fifth Circuit, at 1156-57, is equally applicable to the instant case:

This determination demands that the Board do more than simply tally the factors on either side of a proposition. The crucial consideration is the weight or significance, not the number, of factors relevant to a particular case. So as to permit proper judicial review, the Board must assign a relative weight to each of the competing factors it considers. The unit determination will be upheld only if the Board has indicated clearly how the facts of the case, analyzed in light of the policies underlying the community of interest test, support his appraisal of the significance of each factor.

Such analysis becomes even more crucial where the Board is seeking to reverse a prior unit determination finding an "all-employee" unit based upon *The Regency Hyatt House* at the same HYATT. While it is recognized that there may be more

than one appropriate unit at one facility, the Courts "are not convinced that merely because the Board at the urging of the union, has made two conflicting determinations, that this shows conclusively that there are two appropriate units in one facility." *May Department Stores Co. v. NLRB*, 454 F.2d 148, 150 (9th Cir. 1972). *There must be significant change and the Board must explain its departure from its earlier decisions involving same and comparable facilities, properly analyzing the various competing factors regarding the underlying "community of interest."* *Id.*, at 150-151.

The Board in the instant case did not correctly analyze the factors underlying the "community of interest" at this HYATT as required by *Purnell's Pride, Inc., supra*. Further, neither the Board nor the Eleventh Circuit addressed and analyzed the requirement for a finding of "substantial change" in the facts to reverse a prior unit determination at HYATT. Thus, there has been a misapprehension or gross misapplication of the facts in this case requiring the intervention of the Supreme Court. *Golden State Bottling Co., Inc., v. NLRB*, 414 U.S. 168 (1973).

## CONCLUSION

HYATT seeks to further the purposes of the National Labor Relations Act, not frustrate it, by petitioning this Honorable Court. Many Hyatts throughout the United States are unionized and Hyatt engages in collective bargaining negotiations with the duly certified representative at each of these hotels. However, the service to the guests of all HYATT, and the hotel and corporatewide "all-employee" personnel policies, practices and procedures, as well as the purpose and intent of the Act, are frustrated and damaged by the Board's decision in this case.

There is an established policy of "all-employee" units for all manual operating employees in highly integrated hotel operations, as specifically applied by the Board to HYATT. *The Regency Hyatt House, supra*. Moreover, the Board failed to weigh and analyze the competing factors underlying the "community of interest" in support of its decision (*Purnell's Pride, Inc., supra*), and failed to demonstrate any "substantial change" to justify the reversal of the prior "all-employee" unit at this HYATT. *May Department Stores Co., Inc., supra*.

For all of the foregoing reasons, arguments and authorities, it is respectfully submitted that this Court should grant the Petition of Petitioner and issue a *writ of certiorari* to the United States Court of Appeals for the Eleventh Circuit to review and to set aside the NLRB's order.

Respectfully submitted,

---

ARCH STOKES

---

C. DAVID JOHNSTON  
STOKES, LAZARUS & WATSON  
3711 Roswell Road  
Atlanta GA 30042  
(404) 261-1772  
Counsel for Hyatt Hotels Corporation

## **CERTIFICATE OF SERVICE**

I, Arch Stokes, do hereby certify that I have this date served three (3) copies of the foregoing Petition upon the following person by depositing said copies in the United States Mail, properly posted and addressed to:

The Honorable John C. Truesdale  
Executive Secretary  
National Labor Relations Board  
1717 Pennsylvania Avenue, N.W.  
Room 701  
Washington, D.C. 20570  
ATTN: JOLANE A. FINDLEY, ESQUIRE

This \_\_\_\_\_ day of November, 1983.

---

**ARCH STOKES**  
Counsel for Hyatt Hotels Corporation

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**NO. 82-8146**

---

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,  
Cross-Respondent,*

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent,  
Cross-Petitioner.*

---

**Petition for Review and Cross Application  
for Enforcement of an Order  
of the National Labor Relations Board**

---

**(June 21, 1983)**

**Before HATCHETT and CLARK, Circuit Judges,  
and SCOTT,\* District Judge.**

\*Honorable Charles R. Scott, U.S. District Judge for the Middle District of Florida, was a member of the panel that heard oral arguments but due to his death on May 12, 1983 did not participate in this decision. 28 U.S.C. §46(d).

## PER CURIAM:

Hyatt Hotels Corporation seeks review of a National Labor Relations Board order directing it to bargain collectively with United Labor Unions, Local 100, to cease and desist certain unlawful practices, to provide requested information, and to post an appropriate notice. The Board filed a cross-application for enforcement of its order. Because we find the order appropriate under the circumstances, we grant enforcement.

The Hyatt Hotel in question is a luxury convention hotel in New Orleans, Louisiana. No history of collective bargaining exists, although in 1977 a unit determination was made which included all full-time and regular part-time employees—an all manual employee unit.<sup>1</sup> Record Vol. 2 at 1014-1019. On March 16, 1981, United Labor Unions, Local 100, filed a representation petition with the Board seeking certification as the exclusive bargaining representative of employer's full-time and regular part-time employees in housekeeping and laundry/valet departments. At the representation hearing, the employer opposed the unit as inappropriate.<sup>2</sup> The Regional Director determined the unit to be as the union requested with the addition of the concierge and bell staff departments. Ultimately, the unit was found to consist of all regular employees in the four above-mentioned services. A Board election was held and the union

---

<sup>1</sup>The front office, office clerical, guards, supervisors, professionals, PBX and reservations were excluded from coverage. Record Vol. 1 at 374. The union, Hotel, Motel, and Restaurant Employees Union, Local 166, AFL-CIO, was never certified as the exclusive bargaining representative.

<sup>2</sup>Hyatt introduced the evidence used in the 1977 unit determination. See Record Vol. 1 at 7. Hyatt also opposed the union as outside the meaning of "labor organization" as defined in Section 2(5) of the National Labor Relations Act, 29 U.S.C. sec. 152(5) (1973). The Regional Director found against employer on the status of the union. This issue is not before us on appeal.

was duly certified.<sup>3</sup>

Contesting the appropriateness of the unit, the employer refused to bargain with or supply requested information<sup>4</sup> to the union.<sup>5</sup> The union filed unfair labor practice charges and General Counsel filed a complaint. Respondent filed an answer denying all of the allegations in the complaint. A hearing was set before an administrative law judge, and on December 14, 1981, General Counsel filed a motion to transfer and for summary judgment before the Board.

The Board issued an order transferring the proceeding to the Board and issued an order of Notice to Show Cause why no summary judgment should enter. Respondent filed separate responses to the motion for summary judgment and the Notice to Show Cause. General Counsel also filed a supplement to the motion for summary judgment. Finding a violation of sections 8(a)(1) and (5) of the National Labor Relations Act, the Board

---

<sup>3</sup>Hyatt filed objections to the election asserting that the now-excluded employees in the prior 1977 unit should be allowed to cast challenged ballots and that certain terminated employees were wrongfully permitted to vote. The Regional Director overruled the objections and certified the union. Hyatt requested review with the Board. The Board denied Hyatt's request.

<sup>4</sup>The union requested information regarding the names, addresses, telephone numbers, dates of hire, job classifications and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules.

<sup>5</sup>Refusing to bargain is the appropriate procedure for contesting the Board's decision here. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 61 S.Ct. 908, 85 L.Ed. 1251 (1941).

granted summary judgment on the grounds that Hyatt was refusing to bargain based on the issues previously litigated in the representation hearing<sup>6</sup> and that the employer had not offered to adduce any new or previously unavailable evidence requiring the Board to reexamine its decision. 260 NLRB No. 66 (1982).

The pivotal issue in this case is whether the Board's unit determination was appropriate under the circumstances.<sup>7</sup> A strict standard of review is afforded to unit determinations. "[T]he selection of an appropriate unit lies largely within the discretion of the Board, whose decision, 'if not final, is rarely to be disturbed.'" *South Prairie Construction Co. v. Local 627, I. U. O. E.*, 425 U.S. 800, 805, 96 S.Ct. 1842, 1844, 48 L.Ed.2d 382, \_\_\_\_\_ (1976) (quoting *Packard Motor Car Co. v. NLRB*, 330 U.S. 485, 491, 67 S.Ct. 789, 793, 91 L.Ed.2d 1040, \_\_\_\_\_ (1947)).

The Board is not required to find the *most* appropriate unit but only a unit within the range of units appropriate under the circumstances. *NLRB v. J. C. Penney Co.*, 559 F.2d 373, 375 (5th Cir. 1977). The employer carries the burden of showing that the unit selected is "clearly not appropriate" by establishing a lack of community interest among the unit selected. Factors to be considered in assessing community of interest include common supervision, similarity in job function, operational integration, geographic proximity, degree of employee interchange, and bargaining history. *Id.*

In the instant case, we find that substantial evidence on the record as a whole supports a finding of community interest in the designated unit and that an all manual employee unit is not mandated. Administratively, the four departments constituting

---

<sup>6</sup>Hyatt continued to contest the appropriateness of the unit determination.

<sup>7</sup>Section 9(b) of the National Labor Relations Act grants the Board the power to determine the appropriate unit for collective bargaining. 29 U.S.C. sec. 159(b) (1973).



the approved unit are all within the Rooms division of the hotel. While each department has separate immediate supervision, the next level of supervision is the same. The non-unit departments within the Rooms division include front desk, reservations, and PBX (telephone attendant). These non-unit employees perform basic office clerical functions while the unit employees perform unskilled manual functions. Unit employees have a high degree of functional integration. Daily contact between unit and non-unit employees is much less.<sup>8</sup> Decision and Direction of Election at 4-7 n.6. No history of collective bargaining exists at this Hyatt. Record Vol. 1 at 17.

Hyatt argues that all luxury convention hotels in New Orleans and all other unionized Hyatts have all employee units. Apparently, the potential harm in anything less than an all employee unit is that a smaller unit would operate against the Hyatt philosophy of doing whatever necessary to please the guests. Record Vol. 2 at 185-86. The Board refutes that it has only certified all employee units in other luxury convention hotels. The Board first notes that when Hyatt refers to an all employee unit, it really means a broader manual employee unit which still excludes front office and clerical personnel. The Board then notes that even an all manual employee unit is not always found, citing *Hyatt Regency Phoenix*, 256 NLRB 1099 (1981), *enforced*, \_\_\_\_\_ F.2d \_\_\_\_\_ (9th Cir. 1982), where a unit of engineering and maintenance employees was found appropriate.<sup>9</sup> See also *Arcadian Shores, Inc., d/b/a Myrtle Beach Hilton v. NLRB*, 580 F.2d 118 (4th Cir. 1978) (unit composed of housekeeping, laundry, and bell staff employees but excluding restaurant employees appropriate). The Board also notes that where an all manual employee unit has been found, the union petitioned for such a unit or the parties consented to

---

<sup>8</sup>Non-unit employees outside the Rooms division include Food and Beverage, Accounting, Convention Services, Public Relations, Sales, Personnel, Engineering, and Security.

<sup>9</sup>Hyatt would distinguish this case as involving a craft unit.

it. The Board maintains that it has never drawn the distinction urged by Hyatt between luxury convention hotels and other hotels and motels but, rather, applies a case-by-case approach in making unit determinations. *John Hammonds & Roy Winegardner, Partners, d/b/a 77 Operating Co., d/b/a Holiday Inn Restaurant*, 160 NLRB 927 (1966), *enforced*, 387 F.2d 646 (4th Cir. 1967). Thus, the unit certified is *an* appropriate unit.

Hyatt maintains that even if the smaller unit might be within the realm of appropriate units, this unit determination cannot stand because it conflicts with the 1977 determination of all manual employees and the Regional Director failed to justify the change. We disagree. An extensive fact-finding hearing was held.<sup>10</sup> A detailed and reasoned opinion issued in which the Regional Director noted the prior determination and the changed circumstances permitting redetermination. Decision and Direction of Election at 2-3 n.4. Several years had intervened between determinations.<sup>11</sup> We reiterate also that the former unit determination was the unit petitioned for by the union, did not result in collective bargaining, and involved a different union. Thus, based on the record before the Board, no abuse of discretion occurred.

Hyatt also argues that the Board allowed the union's interest to be controlling in violation of section 9(c)(5) of the National Labor Relations Act, 29 U.S.C. sec. 159(c)(5).<sup>12</sup> The union, however, stated that it would seek to represent a more expansive unit if the Regional Director found a broader unit to be

---

<sup>10</sup> A supplemental hearing on voting eligibility was also held.

<sup>11</sup> "There is no rule which prevents the redetermination of material facts by the NLRB, especially after the passage of a number of years." *NLRB v. Alterman Transport Lines, Inc.*, 465 F.2d 950, 952 (5th Cir. 1972).

<sup>12</sup> Section 9(c)(5) of the National Labor Relations Act provides in part that "[i]n determining whether a unit is appropriate . . . the extent to which the employees have organized shall not be controlling." 29 U.S.C. sec. 159(c)(5) (1973).

appropriate. Record Vol. 1 at 142. Moreover, the unit designated by the Regional Director is, in fact, larger than the one petitioned for by United Labor Unions. Decision and Direction of Election at 8 n.10. The Board may give weight to the extent of union organization. *NLRB v. Metropolitan Life Ins. Co.*, 380 U.S. 438, 441-42, 85 S.Ct. 1061, 1063, 13 L.Ed.2d 951 (1965); *Arcadian Shores, Inc. v. NLRB*, 580 F.2d 188, 120 (4th Cir. 1978); *NLRB v. Alterman Transport Lines, Inc.*, 465 F.2d 950 (5th Cir. 1972). "The Board's determination is clearly not void merely because it coincides with the extent of organization." *Alterman Transport*, 465 F.2d at 952.

Hyatt also cites as error the refusal to allow employees in the previous unit to vote at least a challenged ballot. Hyatt submits that such conduct by the Board violates its and its employees' administrative due process rights. That argument is meritless. The correct procedure for determining an appropriate unit was followed. Non-unit employees are not precluded from organizing if they so desire. The Board's findings in this and Hyatt's other contentions are supported on the record as a whole. Accordingly, the order is enforced.

#### **ENFORCEMENT GRANTED.**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

---

**NO. 82-8146**

---

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,  
Cross-Respondent,*

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent,  
Cross-Petitioner.*

---

**Petition for Review and Cross Application  
for Enforcement of an Order  
of the National Labor Relations Board**

---

**ON PETITION FOR REHEARING AND SUGGESTION  
FOR HEARING *EN BANC***

---

(Opinion June 21, 11 Cir., 1983, \_\_\_\_\_ F.2d \_\_\_\_\_).

(August 25, 1983)

Before HATCHETT and CLARK, Circuit Judges,  
and SCOTT,\* District Judge.

**PER CURIAM:**

The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing *en banc* (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing *En Banc* is DENIED.

ENTERED FOR THE COURT:

---

Thomas A. Clark, United States Circuit Judge

\*Honorable Charles R. Scott, U.S. District Judge for the Middle District of Florida, was a member of the panel that heard oral arguments but due to his death on May 12, 1983 did not participate in this decision. 28 U.S.C. §46(d).

## STATUTE INVOLVED

National Labor Relations Act, as amended, (61 Stat. 136,  
73 Stat. 519, 29 U.S.C., Sec. 151, et seq.)

*Section 7.* Employees shall have the right to self-organization; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in subsection 8(a)(3).

*Section 9(b).* The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit vote against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if

such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

*Section 9(c)(5).* In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

**DEC 27 1983**

ALEXANDER L. STEVAS,  
CLERK

---

**NO. 83-849**

---

**THE SUPREME COURT  
OF THE UNITED STATES**

---

**OCTOBER TERM, 1983**

---

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,*

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

---

**Petition for Writ of Certiorari to the  
United States Court Of Appeals for the Eleventh Circuit**

---

**SUPPLEMENTAL APPENDIX**

---

**ARCH STOKES  
C. DAVID JOHNSTON  
STOKES, LAZARUS & WATSON  
3711 Roswell Road  
Atlanta, GA 30042  
Attorneys for Petitioner**



---

NO. 83-849

---

**THE SUPREME COURT  
OF THE UNITED STATES**

---

OCTOBER TERM, 1983

---

**HYATT HOTELS CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS,**  
*Petitioner,*

**versus**

**NATIONAL LABOR RELATIONS BOARD,**  
*Respondent.*

---

**Petition for Writ of Certiorari to the  
United States Court Of Appeals for the Eleventh Circuit**

---

**SUPPLEMENTAL APPENDIX**

---

**ARCH STOKES  
C. DAVID JOHNSTON  
STOKES, LAZARUS & WATSON  
3711 Roswell Road  
Atlanta, GA 30042  
Attorneys for Petitioner**

## TABLE OF CONTENTS

### SUPPLEMENTAL APPENDIX:

PAGE

*Hyatt Regency New Orleans*

260 NLRB No. 66 (1982) ..... A-4

*Hyatt Regency New Orleans, NLRB Case No.*

15-RC-6771 (1981) ..... A-5

*Hyatt Corporation, d/b/a Hyatt Regency*

*New Orleans, NLRB Case No.*

15-RC-6147 (1977) ..... A-6

*Hotel Equities, d/b/a The Regency Hyatt*

*House, 171 NLRB 1347 (1968) ..... A-7*

*Hyatt Corporation, d/b/a Orlando Hyatt House,*

*NLRB Case No. 12-RC-5344 (1977) ..... A-8*

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**Case No. 15-CA-8351-2**

**HYATT REGENCY NEW ORLEANS  
and  
UNITED LABOR UNIONS, LOCAL 100**

**DECISION AND ORDER**

Upon a charge filed on October 13, 1981, by United Labor Unions, Local 100, herein called the Union, and duly served on Hyatt Regency New Orleans, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 15, issued a complaint on November 16, 1981, against Respondent, alleging that Respondent, had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

260 NLRB No. 66

With respect to the unfair labor practices, the complaint alleges in substance that on September 21, 1981, following a Board election in Case 15-RC-6771,<sup>1</sup> the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about October 8, 1981, and at all times

thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. Further, since on or about October 8, 1981, Respondent has failed and refused to supply information to the Union regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules. On November 27, 1981, Respondent filed its answer to the complaint denying all of the allegations in the complaint.

On December 14, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 17, 1981, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed separate responses to the Motion for Summary Judgment and the Notice To Show Cause. The General Counsel also filed a supplement to his summary judgment motion.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

## Ruling on the Motion for Summary Judgment

In its answer to the complaint and its responses, Respondent contests, *inter alia*, the appropriateness of the unit and the validity of the Union's certification. In his Motion for Summary Judgment, counsel for the General Counsel alleges that Respondent seeks to relitigate issues considered in the underlying representation case. We agree.

Our review of the record in this case, including the record in Case 15-RC-6771, reveals that, after a hearing, the Regional Director issued a Decision and Direction of Election on May 26, 1981.<sup>2</sup> At the hearing, Respondent's attorney stated that the jurisdictional stipulation entered into in 1977 at the representation hearing concerning the New Orleans, Louisiana, facility was still true and accurate. Based on this stipulation, the Regional Director found that Respondent met the jurisdictional standards of the Board. The Regional Director further found that the appropriate unit consisted of all full-time and regular part-time employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, guards, and supervisors as defined in the Act.

On June 8, Respondent filed a petition for review of the Regional Director's Decision and Direction of Election arguing that the Board had violated its own administrative procedures and rules, and had failed to set forth an hourly formula to determine whether certain employees shared a sufficient community of interest to warrant their inclusion in the unit.

On June 19, the Board stayed the representation election and remanded the case to the Regional Director with instructions to issue a supplemental decision setting forth an eligibility formula for regular part-time employees, casual employees, and on-call employees. On June 30, a second hearing was held to

adduce further evidence and, on July 13, the Regional Director issued a Supplemental Decision and Direction of Election in which it was determined that Respondent does not employ any part-time, casual, or on-call employees in the appropriate unit. In the Supplemental Decision, the Regional Director found the appropriate unit consisted of all regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

On July 28, Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Direction of Election. The request for review was denied on August 4. In accordance with the Supplemental Decision and Direction of Election, an election was conducted on August 11, and the tally of ballots furnished the parties after the election showed 134 votes cast for, and 57 against, the Union. There were 17 challenged ballots, an insufficient number to affect the results. Respondent filed timely objections to the election arguing that certain employees who had been included in the unit in a 1977 representation case involving the same parties should have been allowed to cast challenged ballots and that employees who had been terminated by it prior to the election were wrongfully permitted to vote. After an investigation, the Regional Director on September 21 issued his Supplemental Decision and Certification of Representative in which he overruled the objections in their entirety and certified the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. Respondent filed a timely request for review of the Regional Director's Supplemental Decision and Certification of Representative. The request for review was denied on December 18 by telegraphic order of the Board.

On September 28, the Union, by letter, requested, and is continuing to request, Respondent to provide certain informa-

tion regarding the unit employees for purposes of bargaining including the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules. The Union further requested Respondent to bargain collectively with it as the collective-bargaining representative of the unit employees.

In its answer to the complaint in this case, Respondent denies, *inter alia*, its jurisdictional standing, the Union's status as a labor organization, and its unlawful refusal to bargain with the Union. However, Respondent admitted that it met the Board's jurisdictional requirements in the underlying representation proceeding. Further, the Union's status was contested in said representation proceeding and the Regional Director found that the Union is a labor organization within the meaning of the Act. Respondent offers nothing to controvert this finding. With respect to its denying that it has refused to bargain with the Union, attached to the General Counsel's Motion for Summary Judgment is a copy of Respondent's letter to the Union, dated October 8, 1981, stating that the Union's request for bargaining and for information relevant to bargaining was inappropriate because the issue of the Union's certification was still before the Board. Respondent has submitted nothing to controvert this document. Further, it is apparent from Respondent's response to the Motion for Summary Judgment and the Notice To Show Cause that it desires to test the appropriateness of the unit and the resulting representation case. Accordingly, we deem the allegations of the complaint concerning Respondent's refusal to bargain to



be true. See *Georgia, Florida, Alabama Transportation Company*, 228 NLRB 1321 (1977). Thus, it appears that Respondent is attempting to raise issues in the present case which were, or could have been, raised in the underlying representation case.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>3</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding.<sup>4</sup> We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.<sup>5</sup>

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. The Business of Respondent

Respondent is and has been at all times material herein a California corporation which operates a hotel located in New Orleans, Louisiana, where it provides food, lodging, and related hotel services to transient guests. During the 12 months preceding November 16, 1981, a representative period, Respondent derived gross revenues in excess of \$500,000, and purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Louisiana.



We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

## II. The Labor Organization Involved

United Labor Unions, Local 100, is a labor organization within the meaning of Section 2(5) of the Act.

## III. The Unfair Labor Practices

### A. *The Representation Proceeding*

#### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All regular employees in the Employer's house-keeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

#### 2. The certification

On August 11, 1981, a majority of the employees of the Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 15, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining repre-

sentative of the employees in said unit on September 21, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

*B. The Request To Bargain and Respondent's Refusal*

Commencing on or about September 28, 1981, and at all times thereafter, the Union has requested Respondent to provide certain requested information for purposes of bargaining including the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal to overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules; and to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. The requested information is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Commencing on or about October 8, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to provide the requested information and to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since October 8, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Having found that Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

#### CONCLUSIONS OF LAW

1. Hyatt Regency New Orleans is an employer engaged in

commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Labor Unions, Local 100, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since September 21, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 8, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By failing and refusing on or about October 8, 1981, and at all times thereafter, to supply information for the purposes of collective bargaining to the above-named labor organization regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay, jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for

refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices effecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Hyatt Regency New Orleans, New Orleans, Louisiana, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Labor Unions, Local 100, as the exclusive bargaining representative of its employees in the following appropriate unit:

All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations,

food and beverage convention services, engineering, accounting, sales, personnel public relations and security personnel, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Failing and refusing to supply requested information for the purposes of collective bargaining to United Labor Unions, Local 100, regarding, *inter alia*, the names, addresses, telephone numbers, dates of hire, job classifications, and rates of pay of all bargaining unit employees; a breakdown of the bargaining unit by departments and job classifications; descriptions of all fringe benefits including but not limited to vacations, holidays, leaves of absence, sick leave, bereavement pay jury duty pay, sickness and accident insurance, and pensions; description of overtime policies including daily overtime pay, conditions for refusal of overtime, and division of overtime; description of layoff and recall policies; description of seniority policies, including their application to benefits; description of disciplinary policies; and all work rules.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, supply information to the above-named labor organization for the purposes of collective bargaining as the exclusive representative of all employees in the



aforesaid appropriate unit.

(c) Post at the Hyatt Regency New Orleans copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. February 26, 1982

---

John H. Fanning,                      Member

---

Howard Jenkins, Jr.,                Member

---

Don A. Zimmerman,                Member

(SEAL)                      NATIONAL LABOR RELATIONS BOARD

## **APPENDIX**

### **NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

**WE WILL NOT** refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Labor Unions, Local 100, as the exclusive representative of the employees in the bargaining unit described below.

**WE WILL NOT** fail and refuse to supply requested information for the purposes of collective bargaining to United Labor Unions, Local 100, as the exclusive representative of the employees in the bargaining unit described below.

**WE WILL NOT** in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

**WE WILL**, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All regular employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel, professional employees, confidential employees, guards and supervisors as defined in the Act.



WE WILL, upon request, supply information for the purposes of collective bargaining to the above-named Union, as the exclusive representative of the employees in the bargaining unit described above.

HYATT REGENCY NEW ORLEANS

(Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Plaza Tower, Room 2700, 1001 Howard Avenue, New Orleans, Louisiana 70113, Telephone 504-589-6389.

**FOOTNOTES**

Official notice is taken of the record in the representation proceeding, Case 15-RC-6771, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electro-systems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett*

*Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

<sup>2</sup> All dates are in 1981, unless otherwise indicated.

<sup>3</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

<sup>4</sup> Respondent has requested oral argument. This request is hereby denied as the record, the pleadings, and the briefs adequately present the issues and the positions of the parties.

<sup>5</sup> In its response to the order transferring the proceeding to the Board and Notice To Show Cause, Respondent contends that the order transferring the proceeding to the Board and Notice To Show Cause is void *ab initio* because it issued on December 17, 1981, and the Board's denial of the Respondent's request for review of the Regional Director's Supplemental Decision and Certification of Election in the underlying representation case did not issue until December 18. We find this contention to be without merit. The order and notice to which Respondent refers merely transferred and continued the proceeding before the Board. The Board did not consider this case until after Respondent's request for review was denied. We further note that Respondent presents no argument that it has been prejudiced by the fact that the Board denied its request for review 1 day after the order and notice issued in this case.

Respondent has also requested that the full Board reconsider the denial of respondent's request for review of the Regional Director's Supplemental Decision and Certification of Representative. This request is denied. It is the policy of the Board for the same panel which decided a case to pass upon it for reconsideration and for the full Board to consider such a motion only if the panel refers it to the full Board. *Florida Steel Corporation*, 224 NLRB 1033 (1976); *Enterprise Industrial Piping Company*, 118 NLRB 1 (1957).

<sup>6</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**HYATT REGENCY NEW ORLEANS 1/  
*Employer***

**and**

**UNITED LABOR UNIONS, LOCAL 100  
*Petitioner***

**Case No. 15-RC-6771**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent certain employees of the Employer. 3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments 5/; excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations and security personnel 6/, professional employees, confidential employees 7/, guards 8/, and supervisors 9/ as defined in the Act.

#### DIRECTION OF ELECTION 10/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before

the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by UNITED LABOR UNIONS, LOCAL 100.

### LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1965); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Suite 2700, Plaza Tower Building, 1001 Howard Avenue, New Orleans, Louisiana 70113, on or before June 2, 1981. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 8, 1981.

Dated May 26, 1981

at New Orleans, Louisiana

/s/ Fred A. Lewis

Regional Director, Region 15

## FOOTNOTES

- 1/ The Employer's name appears as amended at the hearing.
- 2/ The parties stipulated, and I find, that the Employer, a California corporation with corporate offices located at 1338 Bay Shore Highway, Burlingame, California, operates a hotel in New Orleans, Louisiana (the only facility involved herein), where it provides food, lodging, and related hotel services to transient guests. During the past 12 months, a representative period, the Employer had gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Louisiana.
- 3/ At the hearing, the Employer refused to stipulate to Petitioner's status as a labor organization. The record establishes that Petitioner is an organization in which employees participate and which exists, in part, for the purpose of dealing with employers concerning wages, hours, and working conditions of employees. Based upon the foregoing, and the record as a whole, I find that Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *N.L.R.B. v. Cabot Carbon Co.*, 360 U.S. 203 (1959).
- 4/ The Employer operates a chain of 58 hotels throughout the United States. The Employer's 27 story New Orleans facility is its 4th largest hotel facility and contains 1200 guest rooms, 3 restaurants, 2 lounges and various meeting rooms, exhibit halls and shops. Located on the first floor is a registration lobby consisting of front office, bell staff, and concierge departments. Adjacent to the front office are reservations and pbx departments. Situated behind the registration lobby in a non-public area of the hotel are the housekeeping, laundry/valet, engineering, purchasing, and employee cafeteria departments. The second floor serves as leased space for retail outlets in a shopping mall while the third floor is divided into restaurant, lounge, kitchen, storage, ballroom and exhibit



areas. The fourth floor houses the executive offices (accounting, sales, catering, public relations, and computer department) with additional rooms for group functions. The remaining floors are comprised of guest rooms and there is a restaurant and lounge located on the top level of the hotel. The hotel maintains full occupancy 8 to 9 months a year and caters primarily to convention clientele.

Administratively the hotel is divided into 9 divisions: food and beverage, rooms, convention services, engineering, accounting, sales, personnel, public relations, and security. Individual directors supervise the operations of each division and report to a general manager who in turn reports to a regional vice president. Food and beverage is the largest division employing over 500 employees in 9 departments: banquets, catering, room service, chef, Jonah's, Top of the Dome, Mint Julip, Courtyard and LeClub. Each of these departments is separately supervised. Food and beverage is responsible for the preparation and service of meals and beverages in the Employer's restaurants, lounges, guest-rooms and employee cafeteria. Rooms is the next largest division operating under the overall direction of an executive secretary and executive assistant manager. The Rooms Division employs about 378 employees in 7 departments: housekeeping, concierge, bell staff, laundry/valet, front office, reservations, and pbx. About 228 of these employees work in the housekeeping department which is responsible for cleaning the hotel lobby, front office, pbx, reservations, guest rooms and public corridor areas of the hotel. Convention services employs an unspecified number of employees and is responsible for setting up and arranging rooms for convention meetings. Engineering employs 33 employees and provides all maintenance services throughout the hotel including painting, carpentry, electrical, mechanical, and air conditioning repairs. Accounting is divided into data processing and purchasing departments and employs about 46 employees. This division purchases goods and materials for the hotel and provides routine accounting services. The remaining divisions (sales, public relations, personnel, and security) perform duties traditionally associated with their title descriptions and employ about 61 employees. There are approximately 1100 employees employed in Employer's overall operations.

The Employer and Petitioner disagree over the composition of the unit. The Employer contends that the only appropriate unit is one consisting of all full-time and regular part-time employees at its New Orleans facility excluding all professional employees, confidential employees, guards and supervisors as defined in the Act. The Employer contends that an all employee unit is the only appropriate unit because of the integration of operations, interchange between departments, and similarity of benefits enjoyed by all hotel employees. Petitioner argues that a smaller unit limited to housekeeping, and laundry/valet employees

constitutes an appropriate unit based upon the nature of their work and the lack of functional integration or transfer between these and other departmental employees. At the hearing, Petitioner, stated its willingness to proceed to an election in a larger unit if the record established the appropriateness of such a unit. In *John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant*, 160 NLRB 927, the Board overruled its policy (promulgated in *Arlington Hotel Company, Inc.*, 126 NLRB 400), of finding only overall units to be appropriate in the hotel industry. In *77 Operating Company, supra* at 930, the Board indicated that operations in every hotel were not so highly integrated nor employees so similar as to preclude the existence of a separate community of interest among smaller groupings of employees and held that it would thereafter "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees." In *Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347, the Board reaffirmed its holding in *77 Operating Company, supra*, by stating (at 1348) that:

The Board's intention is to apply to the hotel industry the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors present in each case, such as the distinctions in the skills and functions of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours.

In the instant case, I have considered all of the above factors and find, as stated herein and in more detail in unit placement footnotes 5 and 6, *infra*, that an appropriate unit is all full-time and regular part-time employees in the Employer's housekeeping, laundry/valet, concierge, and bell staff departments of the Rooms division excluding all front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations, and security personnel, professional employees, confidential employees, guards and supervisors as defined in the Act. In reaching this determination, I have taken into consideration the previous unit determination of September 9, 1977, in Case No. 15-RC-6147 wherein a larger unit consisting of all full-time and regular part-time banquet, beverage, concierge, convention services, engineering, housekeeping, kitchen, laundry/valet, pbx, restaurant, room service, service department, stadium club and steward employees were found to be appropriate. The record in the instant case includes voluminous Employer exhibits and a more extensive and complete description of the Employer's operations. Further, the record in the instant case, contrary to the record in Case No. 15-RC-6147 does not show frequent interchange or transfer between housekeeping, laundry/valet, concierge and bell staff and other departments. On the other hand, the



record herein does show a close functional integration between housekeeping, laundry/valet, concierge, and bell staff departments. As discussed in greater detail in footnote 5, *infra*, concierge and bell staff departments perform many of the same duties as housekeeping department employees warranting their inclusion in the unit. The parties also disagree concerning the placement of housekeeping floor supervisors (inspectresses). This issue is discussed in footnote 9, *infra*.

- 5/ The parties stipulated, and the record establishes, that there is a close functional integration between the housekeeping and the laundry/valet departments. Housekeeping comes under the immediate supervision of an executive housekeeper, assistant housekeeper, and several assistant housekeepers who report directly to an executive secretary and an assistant manager of the Rooms division. Reporting directly to the executive and assistant executive housekeepers are 15 hourly paid floor supervisors and an office coordinator. Besides the floor supervisors and office coordinator, housekeeping employs over 200 hourly paid employees in 7 classifications: night housekeeper, turn down people, floor maintenance personnel, caddy attendant, administrative assistant, housekeeper, and houseman. Housekeeping employs basically unskilled workers having limited work experience. While the Employer provides housekeeping and other departmental employees with a general orientation program at the time of hire and permits certain employees to attend training courses pertaining to other divisions (Hyatttrain courses) housekeeping employees, like other departmental employees, are trained almost exclusively within their respective departments by means of on-the-job training and mandatory monthly meetings. Housekeeping employees wear distinctive departmental uniforms and work 2 shifts: from 8 a.m. to 4 p.m. and 3 p.m. to 11:30 p.m. Housekeeping personnel are among the lowest paid hourly workers and receive only minimal compensation through guest tips.

The laundry/valet department is supervised by a manager and assistant manager and employs 42 hourly paid employees in 12 classifications: tailor seamstress; uniform issuer; dry cleaner; valet dispatcher; valet runner; valet checker/marker; washperson hand/shirt presser; linen attendant; linen issue attendant; washperson linen attendant supervisor; and head/lead washman. Laundry/valet personnel clean hotel linen and employee uniforms and provide routine valet service. They deliver linen to rooms on a daily basis which linen is used by housekeeping personnel in cleaning and preparing guests' rooms for occupancy. Laundry/valet employees have daily contact with housekeeping personnel. Like housekeeping personnel, they are basically unskilled employees and perform only simple manual tasks requiring limited training. Further, laundry/valet and housekeeping employees receive identical fringe benefits.

The concierge department operates under the supervision of a concierge manager and a Regency Club manager and employs 11 hourly paid employees. Concierge employees work in the hotel lobby and on the 27th floor where they have daily contact with housekeeping employees. Concierge personnel provide guests with information and arrange tours. They assist housekeeping employees by cleaning guest rooms on the 27th floor. Their cleaning duties include the emptying of trash cans, vacuuming rooms and removing food and beverage items delivered by room service.

The bell staff department is supervised by a bell staff director and employs 35 employees in 4 classifications: bell captain, door captain, bell service person, and bell service doorman. They work throughout the public areas of the hotel where they have daily contact with housekeeping and laundry/valet workers. In addition to performing routine bellman duties, bell staff personnel assist housekeeping personnel by cleaning their work areas and the hotel lobby. On occasion, they assist housekeeping personnel by relocating guest room furniture. When housekeeping personnel finish the evening shift, bell staff personnel perform housekeeping services by providing guests with towels, pillows and roll-away beds. Concierge and bell staff personnel work in many of the same areas of the hotel where housekeeping personnel perform their job functions and enjoy the same fringe benefits as housekeeping and laundry/valet employees. Based upon the similar nature of their duties, their close contact and functional integration with housekeeping personnel and the enjoyment of similar fringe benefits, I find that the concierge and bell staff personnel share a close community of interest with housekeeping personnel and accordingly include them in the unit.

- 6/ The Employer, contrary to Petitioner, contends that the appropriate unit should include front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations, and security personnel. The Employer argues, as it did in Case No. 15-RC-6147, that there exists substantial integration, interchange and transfer between all departments mandating only one overall appropriate unit. However, the record in the instant case does not support the Employer's contention for it shows no substantial integration, interchange or transfer between front office, pbx, reservations, food and beverage, convention services, engineering, accounting, sales, personnel, public relations, security and unit personnel. The front office, pbx, and reservations departments are separately supervised and perform work substantially different in nature from unit personnel. The front office operates under the supervision of a front office manager, assistant manager, and several front office supervisors. The front office employs about 33 employees in 4 classifications: front office credit manager, front of-

fice control agent, graveyard control clerk, and front office registration-ists. Front office personnel greet, register, and check out guests. They clean their own work areas and clean guest rooms when housekeeping is too busy or understaffed. However, the record shows that the cleaning of rooms by front office personnel occurs on an infrequent basis (four occasions over a recent two month period). The Employer's Executive Housekeeper could not testify as to the time spent cleaning rooms nor the number of rooms cleaned on these occasions. Pbx is supervised by a communications manager and several pbx supervisors. It employs 20 operators who are responsible for operating the hotel's sophisticated telephone communications system. On occasion they clean their own work area and relay maintenance requests from guests to housekeeping supervisory personnel. Reservations is supervised by a reservations manager, assistant reservations manager, and a reservations supervisor and employs 9 reservation clerks. Their duties involve the receiving and recording of hotel guest reservations. On occasion they clean their office area and prepare room forecasts which are used by housekeeping supervisors in assigning personnel to clean rooms. While the record shows that housekeeping employees check the status of rooms upon specific requests by the front office, maintain telephone directories in guest rooms, alert guests during emergencies, check color schemes and rearrange furniture in guest rooms upon request, I find that such work is incidental to and limited in nature and not closely allied with front office, pbx or reservation work to warrant the inclusion of the latter departments in the unit. The front office, pbx, and reservations departments, perform essentially office clerical functions as opposed to the manual duties provided by unit personnel.

The food and beverage division operates the hotel's restaurants, lounges, kitchens, banquet, catering, and room services departments. The food and beverage division is separately supervised by a director, assistant food and beverage director and an executive assistant manager with the assistance of the following supervisory personnel: (kitchen) executive chef, Courtyard chef, Courtyard floor chef, garde manager chef, sous chef, relief sous chef, Jonah's chef, pastry chef, assistant pastry chef, banquet chef, relief chef, executive steward, assistant steward, assistant executive steward; (restaurant and lounges) courtyard manager, assistant courtyard manager, Mint Julip Manager, Jonah's Manager, Jonah's assistant manager, Top of Dome Manager, assistant Top of Dome manager, Stadium Club manager, assistant Stadium Club manager, beverage manager, assistant beverage manager, beverage store-room manager, executive secretary, food and beverage controller, food and beverage cashier supervisor; (banquet) banquet manager, banquet supervisors; (catering) director of catering, assistant director of catering; (room service) manager and assistant manager.

The Employer employs about 500 employees in the food and beverage division in the following classifications: (kitchen) courtyard cook, kitchen secretary, kitchen cook, pantry/kitchen, vegetable cook, butcher, kitchen supervisor, night steward, general kitchen; (restaurant and lounges) bartender, barback, host/hostess, cocktail waiter/waitress, head busperson, busperson, pantry, cocktail server, line server, dishwasher, Stadium Club supervisor, storeroom attendant; (banquet) banquet captain, banquet cooks, banquet food server, busperson, cashiers, assistant banquet chefs; (catering) catering secretary, administrative assistant, secretary/catering manager; (room service) busperson, food servers, order takers. Like front office personnel, food and beverage employees have limited functional integration with unit personnel, they perform essentially different work, under separate supervision at greater rates of pay through compensation and tips than unit employees.

Convention services functions under the immediate supervision of a director of convention services, convention services coordinator, convention services supervisor and various floor supervisors. Convention services employs about 38 hourly paid employees in 7 classifications: assistant convention services supervisor, assistant head houseman, convention services secretary, diary control clerk, head houseperson, houseperson and secretary to director of convention services. Convention services personnel work 2 shifts from 7 a.m. - 3 p.m. and 3 p.m. - 11 p.m. during which time they book functions, set up meeting rooms, and pick up guest packages. On occasion convention services personnel move furniture within guest rooms and clean ballrooms and meeting rooms for convention functions. The record reveals only a limited degree of integration with unit employees.

Engineering is supervised by the director of engineering and an assistant director of engineering, building maintenance supervisor, and administrative assistant. Engineering employs approximately 33 hourly paid employees in 16 classifications: chief electrician; electrician; general maintenance; general maintenance utility; laundry mechanic; kitchen mechanic; refrigeration mechanic; key cutter; locksmith; operating engineer; lead painter; painter; lead carpenter; carpenter; administrative clerk; and evening engineer supervisor. Unlike unit employees, 27 out of the 33 maintenance personnel are skilled and semi-skilled employees making substantially higher hourly wages. While housekeeping personnel do perform minor preventive maintenance functions such as changing light bulbs, cleaning swimming pools, replacing vacuum cleaner drive belts, repairing laundry carts, and occasionally painting guest rooms during summer months when occupancy levels are low, it is clear from the record that engineering personnel perform essentially skilled work at substantially higher wage rates and under separate supervision from unit personnel. Moreover, unlike unit employees, engineering per-

sonnel are required to possess skills associated with their trades when hired.

Accounting works under the supervision of a director of accounting and 11 supervisory personnel: controller; assistant controller; data processing manager; director of purchasing; accounts receivable supervisor; credit manager; storeroom manager; accounts payable supervisor; receiving manager; payroll-supervisor; and assistant food and beverage cashier supervisor. Accounting employs about 20 employees in various clerk, bookkeeping, cashier, computer operator positions. Accounting has no close functional integration with unit employees.

Sales employs about 12 employees under the supervision of a director of sales, sales manager, sales representative, tour and travel manager, and assistant tour and travel manager. Personnel is supervised by the director of personnel, and a personnel manager. Public relations employs a public relations director and a public relations secretary. Security is supervised by the director of security who directs the work of a secretary, security supervisor, and house officer. Security employs about 35 security guards. The work performed by sales, personnel public relations and security is separately supervised and clearly vastly different in nature from unit work. The record reveals no close integration between these divisions and unit personnel.

In support of its argument for an overall unit, the Employer contends that substantial departmental transfers and daily contact between, and similarity of fringe benefits enjoyed by, all hourly paid divisional personnel mandates an overall unit finding. In regard to the Employer's claim of daily contact and similarity of job benefits, the record in this case shows that hourly paid employees are governed by the same personnel policy, rules of conduct, wage and salary review and grievance procedures. They receive the same hospitalization, vacation, holiday, leave, meal, education, and recreational fringe benefits. They are paid on the same day, receive report in and jury duty pay, and are required to use the same time clock, employee entrance and cafeteria. They also attend the same orientation programs and are permitted to take the same employer sponsored training courses related to hotel operations. As noted previously, however, these employees are separately trained and supervised and receive a wide range of compensation depending upon the nature of their job skills, duties, and contact with the public. While the record shows some contact between hourly paid divisional employees, it does not indicate the frequency or extent of this contact between all divisions. Where the record shows some functional integration between divisions as noted above, such integration is incidental and limited in nature due to size and specialization of services offered to guests by the Employer and does not warrant a finding that the only appropriate unit is an overall unit.



In regard to the claim of substantial transfers between departments the record does not support the Employer's contention. The Employer introduced Exhibits 16, 17 and 18 to substantiate this claim. Exhibit 16 shows permanent job changes of former employees from the opening of the hotel on August 2, 1976, through March 18, 1981. However, an examination of the 12 month period preceding the hearing reflects few, if any, permanent transfers into or out of the unit. During this period there were 55 permanent transfers overall. Only 8 of these transfers affected unit employees. Housekeeping had 7 transfers of which 3 were to positions outside the unit, concierge had 1 transfer to a position outside the unit and laundry/valet and bell staff experienced no transfers. Exhibit 17 shows permanent job changes of current employees during the period from August 2, 1976 through March 18, 1981. During the last twelve months, 57 affected unit employees and only 11 involved transfers out of the unit and 1 was a transfer into the unit from the food and beverage division. The rest of the transfers were within the unit. Exhibit 18 shows temporary job changes of employees from August 4, 1977 through March 18, 1981. During the 12 month period preceding the hearing there were 1068 documented temporary transfers of which only 15 involved transfers out of the unit. There were no transfers into the unit. From the foregoing, I conclude that Exhibits 16, 17 and 18 do not reflect any substantial degree of temporary or permanent transfers during the past twelve months. Rather on close examination the exhibits reveal that most of the transfers occurred within divisions and departments performing related services. In its brief the Employer emphasized the testimony of personnel director Andrew McCarney who estimated as many as 10,000 temporary but undocumented transfers of personnel outside their respective departments from the opening of the hotel until the present. This estimate was based upon an almost 100 percent yearly turnover of hourly personnel with 2 transfers per employee. McCarney estimated that 2000 of these transfers affected housekeeping since housekeeping employs about 20 percent of the Employer's work force. McCarney failed to indicate however which departments were involved or if any of these transfers required housekeeping personnel to work outside the unit. I conclude from the record that there is insufficient interchange between unit and non-unit employees to compel an overall unit finding. Accordingly, based upon the entire record, I find that the Employer's operations are not so highly integrated, nor are the job skills, supervision, and wage rates so similar as to establish a close community of interest between all hourly paid divisional employees warranting their inclusion in an overall unit. Rather, I find based upon the nature and functions of their jobs, separate supervision, different rates of pay, and methods of compensation (tips vs. straight hourly), lack of transfer and

integration that the front office, pbx, reservation, food and beverage, convention services, engineering, accounting, sales, personnel, public relations, and security personnel do not possess a close community of interest with unit employees and accordingly exclude them from the unit. *Dunfey Family Corporation d/b/a Sheraton Motor Inn*, 210 NLRB 790 (1974); *Lane Avenue Property, Ltd., d/b/a Ramada Inn West*, 225 NLRB 1279 (1976); *Anaheim Operating, Inc., d/b/a Sheraton-Anaheim Hotel*, 252 NLRB No. 134 (1980).

- 7/ The parties stipulated, and I find, that the individuals in the following positions assist and/or act in a confidential capacity to persons who formulate, determine, and effectuate management policy in the field of labor relations: employment representative, supervisor of training, benefit specialist, employee relations specialists, record specialist, executive secretary (food and beverage), executive secretary (rooms), executive secretary to the general manager, and secretary (director of security). Accordingly, I exclude the individuals in the foregoing jobs from the unit as confidential employees.
- 8/ The parties stipulated, and I find, that the security supervisor, house officer (security) and security guards are guards within the meaning of Section 9(b)(3) of the Act. Accordingly, they are excluded from the unit as guards.
- 9/ Petitioner, contrary to the Employer, would exclude from the unit 15 day and night floor supervisors (inspectresses) on the basis that said employees are supervisors within the meaning of Section 2(11) of the Act. The record establishes that the Employer employs 13 day and 2 night floor supervisors. These floor supervisors are hourly paid and punch a time clock, but are paid 20 percent more than other housekeeping personnel. They are responsible for checking guests' rooms to insure that housekeeping employees have properly cleaned and prepared the rooms for occupancy. When deficiencies are discovered, the floor supervisors have and exercise, the authority to require housekeeping personnel to correct said deficiencies. On occasion, the floor supervisors clean rooms when there is a shortage of housekeeping employees. They possess the authority to make work assignments and to send employees home when there is not sufficient work available. While floor supervisors have no authority to hire or fire employees, they clearly do have the authority to resolve minor disciplinary problems and to effectively recommend the issuance of warnings. On occasion they issue warnings and are generally regarded by housekeeping personnel as supervisors. Based upon the entire record and in particular the possession by floor supervisors of authority to assign work, send employees home, and effectively recommend employee discipline, I find that they are supervisors within the

meaning of Section 2(11) of the Act. Accordingly, I exclude them from the unit.

During the hearing, the Employer contended that the house department office coordinator, the linen attendant supervisor, and the lead washman should be included in the unit as non-supervisory employees performing unit work. Petitioner took no position on their inclusion or exclusion from the unit. The record reveals no evidence showing the possession of supervisory responsibilities by these individuals but rather shows that they perform unit work under similar working conditions as other unit personnel. The office coordinator is responsible for preparing and giving to various housekeeping personnel a list of rooms to be cleaned. The office coordinator relays messages from other departments concerning the arrangement and cleaning of guests' rooms. On occasion when personnel shortages occur, the office coordinator assists housekeeping employees in cleaning rooms. The linen attendant supervisor functions as a lead person and is responsible for handing out or issuing linen. The head washman is responsible for cleaning hotel linen. Based upon the foregoing, I find that the foregoing individuals are not supervisors. Further, based upon the nature of their duties, as well as the similarity in supervision and fringe benefits, I find that the office coordinator, linen attendant supervisor and lead washman possess a close community of interest with unit employees. Accordingly, I include them in the unit.

The parties stipulated, and I find, that the following individuals possess the authority to responsibly direct employees and are supervisors within the meaning of Section 2(11) of the Act: Pastry Chef; Assistant Food & Beverage Director; Public Relations Director; Data Processing Manager; Mint Julip Manager; Assistant Stadium Club Manager; Audio Visual Manager; Assistant Top of the Dome Manager; Beverage Manager; Assistant Controller; Personnel Manager; Payroll Supervisor/Accounting; Accounts Receivable Supervisor; Food & Beverage Cashier Supervisor; Food & Beverage Controller/ Assistant Laundry/ Valet Manager; Room Service Manager; Assistant Director of Engineering; Banquet Chef/Kitchen; Assistant Housekeeper; Front Office Supervisor/A.M.; Sales Manager; Assistant Reservations Manager; Sales Representative; Assistant Director of Catering; Courtyard Chef/Kitchen; Courtyard Floor Chef/P.M./Kitchen; Building Maintenance Supervisor/Engineering; Garde Manager Chef/Kitchen; Assistant Courtyard Manager; Assistant Manager/Rooms; Sous Chef/Kitchen; PBX Supervisor/P.M.; Convention Service Coordinator; Jonah's Chef/P.M.; PBX Supervisor/A.M.; Assistant Steward; Executive Steward; Assistant Executive Steward; Executive Housekeeper; Stadium Club Manager; Relief Chef/Kitchen; Top of the Dome Manager; Credit Manager/Accounting; Jonah's Manager; Director of Security;



Communications Manager/PBX; Assistant Tour & Travel Manager/Sales; Tour & Travel Manager/Sales; Courtyard Manager; Assistant Pastry Chef/Kitchen; Assistant Room Service Manager; Banquet Manager; Assistant Front Office Manager; Director of Convention Services; Concierge Manager; Assistant Food & Beverage Cashier Supervisor/Accounting; Convention Services Supervisor; Front Office Manager; Floor Supervisor/Convention Services; Laundry/Valet Manager; Director of Purchasing; Relief Sous Chef/Kitchen; Storeroom Manager/Purchasing; Reservations Manager; Assistant Beverage Manager; Director of Guest Services; Reservations Supervisor; Receiving Manager/Purchasing; Jonah's Assistant Manager; Regency Club Manager/Concierge; Executive Chef; Director of Catering; General Manager; Director of Sales; Director of Personnel; Controller; Director of Engineering; Executive Assistant Manager/Rooms; Executive Assistant Manager/Food & Beverage; Front Office Supervisor/P.M.; Beverage Storeroom Manager; Audio Visual Assistant Manager; Secretary/Controller; Management Trainee; and Administrative Assistant/Engineering. Accordingly, I exclude the individuals in the foregoing job classifications from the unit as supervisors.

- 10/ Although the unit found to be appropriate herein is larger than the unit petitioned for, the Petitioner has expressed a willingness to proceed to an election in a larger unit, and as I am administratively satisfied that Petitioner has an adequate showing of interest in the unit found appropriate, I direct the election.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**HYATT CORPORATION, d/b/a  
HYATT REGENCY NEW ORLEANS 1/  
*Employer***

**and**

**HOTEL, MOTEL AND RESTAURANT  
EMPLOYEES UNION, LOCAL 166, AFL-CIO**

**and**

**THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS, LOCAL 226, AFL-CIO  
*Petitioners***

**Case No. 15-RC-6147**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert

jurisdiction herein. 2/

3. The labor organizations involved claim to represent certain employees of the Employer. 3/

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time employees, including banquet, beverage, concierge, convention services, engineering, housekeeping, kitchen, laundry/valet, PBX, restaurant, room service, service department, stadium club, and steward employees; excluding all accounting 5/, front office, reservation, computer 6/, purchasing 7/, sales 8/, secretarial employees 9/, professional employees, guards, and supervisors 10/ as defined in the Act.

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations 11/. Eligible to vote are those in the units who were employed during the payroll period ending immediately before the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged

for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by HOTEL, MOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 166, AFL-CIO AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 226, AFL-CIO.

#### LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1965); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Suite 2700, Plaza Tower Building, 1001 Howard Avenue, New Orleans, Louisiana 70113, on or before September 16, 1977. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by September 22, 1977.

Dated September 9, 1977

at New Orleans, Louisiana

/s/ Charles M. Paschal, Jr.  
Regional Director, Region 15

## FOOTNOTES

- 1/ The name of the Employer appears as corrected at the hearing.
- 2/ The Employer, a California corporation with corporate offices located at 1338 Bay Shore Highway, Burlingame, California, operates a hotel in New Orleans, Louisiana (the only facility involved herein), where it provides food, lodging, and related hotel services to transient guests. During the past 12 months, a representative period, the Employer had gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$50,000 directly from points located outside the State of Louisiana.
- 3/ The parties stipulated, and I find, that Petitioners are labor organizations within the meaning of the Act.
- 4/ The record reveals that the facility involved herein is the largest hotel in Employer's chain of 53 domestic and 24 international hotels and caters almost exclusively to convention and group functions. The hotel is open

on a 24-hour, 365-day basis and employs a total of about 950 employees. The 27-floor hotel houses 1,250 guest rooms, 5 food and beverage outlets, a grand ballroom, and numerous meeting rooms. Located at the entrance to the hotel on the first floor is a registration lobby, consisting of a front office, bell staff, concierge department and parking garage. Situated behind the registration lobby in the back of the hotel are the housekeeping, laundry/valet, engineering, and purchasing departments, together with an employee cafeteria. The second floor serves as leased space for various retail outlets while the third floor is used for restaurant, kitchen, and storage areas. The fourth floor houses the executive offices (accounting, sales, catering, convention, public relations, and computer departments) and rooms for group functions. The remaining floors serve as guest rooms with a restaurant and lounge located on the top level of the hotel.

Overall supervision of the hotel is vested in a general manager (Thomas R. Gaskill) and two executive assistant managers in charge of food and beverage and room services. Reporting to the general manager are the seven directors who supervise the seven separate divisions within the hotel: *Accounting* (Thomas DeLatte); *Food and Beverage* (Sal Casola); *Engineering* (Art Delaut); *Personnel* (Rebecca Shropshire); *Rooms* (John Orr); *Sales* (Jim Evans); and *Security* (Joe Murry). Within these seven divisions are a total of 23 departments. The two largest divisions (*Food and Beverage* and *Rooms*) include the following departments: *Food and Beverage* (banquet, beverage, catering, courtyard, Jonah's Restaurant, kitchen, Le Club, Mint Julip, purchasing, Stadium Club, and Vendome); *Rooms* (bell staff, concierge, front office, housekeeping, laundry/valet, NCR host, PBX, reservations).

The parties agree that the unit should include all full-time and regular part-time employees working 20 hours or more per week within the following hotel departments:

*Banquet* (banquet waiters); *Beverage* (bartenders, barbacks); *Concierge* (concierge persons); *Convention Services* (set-up houseman); *Engineering* (operating engineers, carpenter, electrician, painter, locksmith, shift engineer, general maintenance, night cleaners, kitchen mechanic, laundry mechanic, audio visual, horticulturist, gardener, plumber, refrigeration/air-conditioning mechanic); *Housekeeping* (day houseman, night houseman, housekeepers); *Kitchen* (head butcher, pantry person, pastry cook, assistant pastry cook, cooks, assistant cooks, oyster shucker); *Laundry/Valet* (washperson, linen attendant, presser, seamstress, marker/checker, runner, dry cleaner); *PBX* (operator, mail and information clerk); *Restaurant* (waitress, waiter, busperson, cocktail waitress/waiter,



hostess, host, sommelier, expeditor); *Room Service* (order taker, waiters); *Service Department* (bellperson, doorman); and *Stadium Club* (attendants, carver).

In addition to the agreement of the parties, the record shows frequent interchange and transfer within the above classifications with employees within these classifications being paid on an hourly basis, receiving the same fringe benefits, and performing related guest services (i.e., the preparation and service of food and beverages and the maintenance of guest rooms). Accordingly, I shall include employees within the aforementioned classifications in the unit.

Petitioners, contrary to the Employer, seek to exclude from the unit all accounting, front office, reservation, computer, purchasing, sales, and secretarial employees on the ground that these employees lack a sufficient community of interest with manual employees referred to above to be included within the same unit. The Employer contends that an all-employee unit is the only appropriate unit because of the integration of its operations and the interchange within job classifications. In *John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant*, 160 NLRB 927, the Board overruled its policy (promulgated in *Arlington Hotel Company, Inc.*, 126 NLRB 400), of finding only overall units to be appropriate in the hotel industry. In *77 Operating Company, supra* at 930, the Board indicated that operations in every hotel were not so highly integrated nor employees so similar as to preclude the existence of a separate community of interest among smaller grouping of employees and held that it would thereafter "consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees." In *Hotel Equities, d/b/a The Regency Hyatt House*, 171 NLRB 1347, the Board reaffirmed its holding in *77 Operating Company, supra*, by stating (at 1348) that:

The Board's intention is to apply to the hotel industry the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors present in each case, such as the distinctions in the skills and functions of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours.

In the present case, I have weighed and balanced all the above factors and find as stated herein (and in more detail in the unit placement footnotes to follow) that the unit of manual employees sought by Petitioners (and upon which the parties agree as to composition) is an appropriate unit, notwithstanding the presence of some limited functional integration (in terms of promotions from within and cross-training of employ-

ees) between the predominantly salaried hotel clerical employees excluded herein and the unit of hourly manual employees found to constitute an appropriate unit.

As noted hereinabove, unit placement issues upon which the parties differ are resolved in the footnotes to follow.

- 5/ Petitioners, contrary to the Employer, seek to exclude *accounting division employees* from the unit. The accounting division is supervised by a comptroller with the assistance of an assistant comptroller, credit manager and cashier supervisor, who the parties agree and the record reflects should be, and are, excluded from the unit. The remaining staff consists of accounts payable and accounts receivable clerks, an income auditor, general cashier, food and beverage cashiers, and secretaries. The clerks perform routine accounting work and the income auditor is responsible for the auditing of all hotel revenues. The general cashiers handle monies received and make bank deposits. The food and beverage cashiers collect cash receipts from the various food and beverage outlets and are supervised by the Accounting and Food and Beverage Directors, with the Food and Beverage Director supervising the physical scheduling and handling of food and beverage checks. The remaining duties of the cashiers are regulated by the Accounting Director and his assistants. The secretaries perform routine office clerical work, including typing, filing, answering telephones, and making appointments. The Employer contends that accounting employees should be included within the unit because of their interchange with other unit employees. The record, including the exhibits introduced by the Employer, do not support this contention. Employer's exhibits (1, 2, and 3), indicating transfers and interchange of employees between departments for the period from August 2, 1976, until July 25, 1977, show only one employee transfer outside the accounting division, no interchange of accounting employees with unit employees, and only four instances within the accounting division where employees interchanged or transferred jobs. The record reflects that the secretaries rarely perform unit work except to assist in emergency situations or to supplement income by assisting at banquets at the end of their workday. Accordingly, because of the lack of interchange and/or transfer of accounting employees with unit employees, the difference in supervision and work performed, I find that the accounting employees lack a sufficient community of interest to warrant their inclusion in the unit. Accordingly, I shall exclude them from the unit.

- 6/ Petitioners, contrary to the Employer, seek to exclude from the unit employees in the following departments within the rooms division (*front office, reservations, and computer operation—NCR hosts*). The front



office staff is comprised of room clerks and cashiers under the immediate supervision of a manager and four assistant managers. The room clerks greet, register, and check out guests, handle incoming mail, and adjust guest complaints. Once a week the room clerks make a physical inspection of about 20 guest rooms and, on occasion, assist in the concierge department bell stand or in the operation of the hotel's automatic elevators. The room clerks are cross-trained as cashiers and work primarily behind a counter in the hotel lobby. The reservations staff consists of reservation clerks who are supervised by a manager and assistant manager. Their primary duties involve the receiving and recording of reservations. Reservation clerks are cross-trained to perform desk clerk duties. The computer or NCR host department consists of a programmer and two computer operators who are supervised by a department manager. The work of the programmer and computer operators appears to be of a technical nature and far different from the manual work performed by unit employees. Employer's exhibits (1, 2, and 3) indicate no interchange or transfer of personnel into or out of the reservations or computer departments and show only 8 instances of transfers by front office employees into departments within the unit with 5 of these transfers appearing as promotions to supervisory positions in unit departments. While the testimony of the Employer's witnesses shows that front office employees have assisted at the bell stand, operated elevators, and aided in the concierge department, these instances appear to be infrequent and for short periods of time. Based upon the difference in supervision and nature of work performed together with the lack of significant interchange or transfers between front office, reservations, computer and unit personnel, I find that front office, reservations and computer department employees do not share a sufficient community of interest with unit employees to warrant their inclusion in the unit. Accordingly, I shall exclude them from the unit.

- 7/ Petitioners, contrary to the Employer, seek to exclude *purchasing department employees* from the unit. The purchasing department is comprised of a director or purchasing agent, storeroom manager, assistant purchasing agent, secretary, and storeroom and receiving clerks. The purchasing agent is responsible for the buying, pricing, and requisitioning of hotel supplies and for the overall supervision of the department. The purchasing agent and storeroom manager are, by agreement of the parties and the record herein, excluded from the unit. The secretary types requisitions and performs routine office-clerical functions. The clerks are responsible for the proper requisitioning and storage of supplies; they work on the ground floor in the back of the hotel between the loading dock and the hotel's housekeeping, laundry, and engineering departments. The record reveals no instances of interchange or transfer of purchasing department employees with unit personnel. Accordingly,

based upon the lack of interchange and transfer between purchasing department employees and unit employees and the difference in supervision and job duties, I find that the purchasing department employees lack a sufficient community of interest with unit employees to warrant their inclusion in the unit. Accordingly, I shall exclude them from the unit.

- 8/ Petitioners, contrary to the Employer, seek to exclude *sales department employees* from the unit. The sales department consists of a director, five sales managers, an executive secretary, five secretaries, a receptionist, and several file clerks. The director is in charge of the entire department and, in accordance with the agreement of the parties and the record herein, is, together with the sales managers and executive secretary excluded from the unit. The secretaries work directly for the sales managers and perform typing, filing and other routine office clerical duties. The receptionist meets and greets those who do business with or have occasion to visit the sales office. The file clerk types and files correspondence and answers the telephone. The record reveals no instances of transfer between sales department employees and unit personnel; interchange between sales and unit personnel is limited to assistance during emergency situations and at after-hours banquets. Based upon the lack of significant interchange, the absence of any transfers with unit personnel, and the difference in supervision and job functions, I find that the sales department employees do not share a sufficient community of interest with unit employees to warrant their inclusion in the unit. Accordingly, I shall exclude them from the unit.

- 9/ Petitioners, contrary to the Employer, seek to exclude from the unit secretarial employees within the beverage, catering, convention services, and housekeeping departments. The record reflects that these secretarial employees are salaried and perform traditional office clerical functions (i.e., filing, typing, answering telephones and making reservations and appointments). In addition, the housekeeping secretary spends the majority of her day preparing the housekeeping payroll. The convention secretary is responsible for taking instruction and promotion data (indicating daily and weekly group functions) to the various departments. The record reveals no instances of transfer between these secretarial employees and unit personnel; interchange between these secretarial employees and unit personnel is limited to assistance of an infrequent nature in emergency situations and at after-hour banquets. In view of the lack of transfer or significant interchange with unit employees and the distinct nature of their clerical functions, I find that these secretarial employees are essentially office clerical employees who lack a sufficient community of interest with unit employees to warrant their inclusion in the unit. Accordingly, I shall exclude the secretaries in the beverage, catering,

convention services, and housekeeping departments from the unit.

- 10/ Based upon the agreement of the parties and the record herein, I shall exclude the following individuals from the unit:

**Accounting** (Comptroller, Assistant Comptroller, Executive Secretary, Credit Manager, Payroll Supervisor, Cashier Supervisor);

**Beverage** (Beverage Manager, Storeroom Manager, Assistant Beverage Managers);

**Casual** (Manager, Captain);

**Catering** (Director, Manager, Assistant Director);

**Convention Services** (Manager, Assistant Manager, Coordinator, Assistant Head Set-up);

**Executive Office** (General Manager, Executive Secretary);

**Front Office** (Executive Assistant Manager, Assistant Manager, Front Office Manager, Assistant Front Office Manager, Front Office Supervisor, Executive Secretary, Reservations Manager, Reservations Assistant Manager);

**Food and Beverage** (Food and Beverage Director, Assistant Food and Beverage Director, Executive Secretary);

**Housekeeping** (Executive Housekeeper, Assistant Housekeepers, Floor Supervisors);

**Kitchen** (Floor Chef, Night Floor Chef, Garden Manager, Swing Chef, Executive Chef, Pastry Chef, Banquet Chef, Sous Chef);

**Laundry/Valet** (Manager—laundry, Manager—valet);

**PBX** (Manager);

**Personnel** (Director, Assistant, Secretary, Applicant Controller, Benefits Supervisor);

**Public Relations** (Director, Secretary);

**Purchasing** (Purchasing Agent, Storeroom Manager);

**Restaurant** (Manager, Assistant Manager);

**Room Service** (Manager, Assistant Manager);

**Rooms** (Management Trainees, Concierge Manager, Regency Club Manager);

**Sales** (Director, Sales Managers, Executive Secretary);

**Security** (Director, Assistant, House Officer, Guard, Secretary);

**Service Department** (Bell Captain, Manager of Guest Service); and

**Stadium Club** (Manager, Supervisor).

- 11/ At the initial hearing in this matter (conducted August 2, 1977), Petitioners requested that the undersigned direct an election within 60 days of the filing of the instant petition (on July 12, 1977) regardless of the unit determinations made herein or any request for review filed in connection therewith. By agreement of the parties, the hearing, which commenced on August 2, 1977, did not resume until August 15, 1977. Following the close of the hearing on August 16, 1977, Petitioners and Employer each received extensions of time within which to file briefs in this matter, said briefs being received on September 6, 1977. In Petitioner's posthearing brief, Petitioners modified their position to merely request that "an election be scheduled at the earliest possible date regardless of any request for review addressed to the Board." The election herein will be conducted at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations, including, but not limited to, the right of any party to request review of this Decision. The Board's August 15, 1977, revision of Section 102.67 of the Rules and Regulations (cited by Petitioners) provides only that elections will be conducted as scheduled without regard to any challenges to the Regional Director's rulings and that, except in specific review cases where the Board decides that conducting the election on the scheduled date would not be appropriate or practical because of the issues involved, the ballots of the employee voters will be impounded. Accordingly, the election will be directed as outlined herein and in accordance with the Board's Rules and Regulations to insure that the question concerning representation is properly resolved as expeditiously as possible and with due regard to the rights of all parties.

**Hotel Equities, D/b/a The Regency Hyatt House and Hotel and Restaurant Employees and Bartenders Union, Local 151, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, *Petitioner*. Case 10-RC-7169**

June 13, 1968

### **DECISION ON REVIEW**

**BY CHAIRMAN McCULLOCH AND MEMBERS  
FANNING, BROWN, AND ZAGORIA**

On November 15, 1967, the Acting Regional Director for Region 10 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a hotelwide unit of employees. Thereafter, the *Petitioner*, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, filed with the National Labor Relations Board a timely request for review of such Decision and Direction of Election contending that the Acting Regional Director erred in including clerical employees. The Employer also filed a timely request for review with respect to other findings made by the Acting Regional Director. *Petitioner* filed a statement in opposition to the Employer's request for review.

The Board by telegraphic order dated December 11, 1967, granted the *Petitioner's* request for review but denied the Employer's. Thereafter, the parties filed briefs on review.

The Board has considered the entire record in this case with respect to the issues under review, including the briefs of the parties, and makes the following findings:

The *Petitioner* seeks a unit of all hotel employees, excluding office clerical, front office, sales department, auditing departmental personnel, and certain other clerical employees. The Acting Regional Director, in accord with the position of the

Employer, found that a hotelwide unit including these groupings is appropriate. Petitioner argues on review that the Employees in these groupings, whose duties are clerical in nature, should be excluded from the unit because their interests are different from those of the other employees whom Petitioner seeks to represent. For reasons set forth below, we find in essential agreement with the Petitioner that the employees in these clerical groupings may be excluded.<sup>1</sup>

The Regency Hyatt House is a luxury hotel in Atlanta, Georgia.<sup>2</sup> The hotel began operations on May 1, 1967, and there is no history of collective bargaining. As noted, the hotel employs several classifications of clerical employees in the front office, sales department, accounting department, and catering office and certain miscellaneous clerical employees, principally secretaries to hotel executives.

The *front office* has its own manager and is located in the hotel lobby behind a long counter which runs half the length of the building. The staff of the front office includes room clerks, reservation clerks, mail and information clerks, front office cashiers, status clerks, and the shipping and receiving clerk. The room clerks assign rooms to guests and take care of requests for numerous hotel services. The reservation clerks, as their title indicates, make room reservations and assist the room clerks when the latter are busy. The mail and information clerks insure delivery of the mail and messages to guests at the hotel; they also assist the room and reservations clerks when the hotel is short handed. The front office cashiers handle collections of money for guests for all charges incurred at the hotel. The status clerks maintain the status board which contains certain information about each guest such as his room number, the day he checked in, etc. There is also a shipping and receiving clerk who accepts and sends out packages for the guests.

*The accounting department:* The comptroller of the hotel is in charge of the accounting department which includes both a data processing group and an audit group. The data proc-



essing personnel keep track of all guest billing at the hotel on the basis of IBM cards completed by and forwarded from each of the hotel departments where expenses would be incurred as well as the room rent. The audit group includes accounting clerks, payroll clerks, and a general cashier. The accounting clerks audit cash register readings and tapes, assist in the taking of inventories, receive bills for hotel supplies, fill in as cashiers at hotel banquets and similar functions, and, with the assistance of the payroll clerks, prepare the payrolls for all departments. The general cashier is the hotel's "banker," and all hotel cashiers submit their receipts to her.

The *sales department* is located in an open area called the lobby promenade, and the function of this department is to sell the facilities of the hotel for conventions and meetings. Its clerical staff includes three secretaries and a file clerk who perform stenographic and recordkeeping services for the salesmen who frequently work away from the hotel bidding on conventions.

The *catering department* is on the same level as the sales department and is right next to it. The staff of this department includes a secretary, a receptionist, a convention coordinator, three banquet representatives, a Frieden machine operator, and a payroll clerk. The convention coordinator verifies arrangements for room and food service for conventions. The banquet representatives arrange for the room and the menu for banquets held at the hotel. The other employees of the sales department staff perform the duties indicated by their titles.

There also appear to be a number of *miscellaneous clerical* employees at the hotel, most of whom are secretaries to various hotel executives.

The unit which Petitioner seeks and which would exclude the foregoing groupings of clerical employees consists of all the hotel's manual operating personnel such as doormen, bellmen, waiters, waitresses, bartenders, cooks, cleaning personnel, and maintenance men.

In finding an overall unit, the Acting Regional Director concluded that the only appropriate unit of hotel operating personnel must include all such personnel—both clerical and manual. We disagree.

Until its recent decision in *John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant*, 160 NLRB 927, the Board's policy for the hotel industry, as promulgated in *Arlington Hotel Company, Inc.*, 126 NLRB 400, was to find, as the Regional Director did here, only overall units to be appropriate. However, in *Holiday Inn* the Board overruled *Arlington*, noting that its experience had indicated that the operations of every hotel were not so highly integrated nor all employees so similar as to negate the existence of a separate community of interest among smaller groupings. The Board therefore held that it would "[t]hereafter consider each case on the facts peculiar to it in order to decide wherein lies the true community of interest among particular employees"<sup>3</sup> of a hotel. Stated otherwise, the Board's intention is to apply to the hotel industry the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors present in each case, such as the distinctions in the skills and functions of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours.

In reaching his determination to include the clerical employees, the Acting Regional Director was not unmindful that the Board in *Holiday Inn* had overruled its *Arlington* policy of normally finding overall hotel units to be appropriate, but he observed that there was no indication in *Holiday Inn* that the Board had reversed a subsidiary policy which had also been announced in *Arlington*, not to exclude hotel clerical classifications as office clerical employees. The Acting Regional Director noted that the Board in *Arlington* had specifically held that hotel clerks may not be characterized "office clerical" employees in the same fashion as the Board utilizes such terminology in an industrial context but are rather—like the doormen, bell-



men, waiters, etc.—a hotel's operating employees. The Acting Regional Director therefore reasoned that since the clerical force and the doormen, bellmen, waiters, etc., i.e., the manual force, may all generically be described as "operating employees," the only appropriate unit of such employees must include both groups together.

While the Board in *Holiday Inn* did not reverse its policy of treating hotel clerical personnel as operating employees, the Acting Regional Director's reasoning is nevertheless contrary to the basic principle of *Holiday Inn*. For, as previously mentioned, under *Holiday Inn* the Board will apply to hotel operations its general unit criteria; that is, weigh and balance all factors in arriving at a unit determination. While this new decisional approach to hotel unit questions does not do away with the Board's policy to treat clerical employees as "operating personnel," it nevertheless relegates that generic classification to the status of just *one factor* among many others—which the Board will consider in making hotel unit findings. And a generic classification may not be the controlling factor any more than it would be controlling in the determination of an industrial unit. That is, drawing the analogy to a manufacturing plant, the mere fact that certain craftsmen might generally be denominated as production and maintenance employees would not by itself defeat a petition to represent them in a craft unit excluding other production and maintenance personnel.<sup>4</sup>

Although they share the same generic classification and notwithstanding the fact that there is a functional relationship between the hotel clerical employees and the manual employees sufficient to find an overall unit to be appropriate, if such had been requested, there are other factors here present which support the view that the manual employees possess a separate community of interest warranting their establishment as a separate bargaining unit. The record readily shows many differences between the two groups of employees. Thus, the manual employees are hourly paid, whereas the clerical employees are salaried. Manual operating employees have their own imme-

ciate supervisors who are different from the supervisors of the various clerical sections. The manual employees, such as maids, waiters, waitresses, bellmen, and doormen, wear uniforms or work apparel which is different from the street or business dress of the clerical force.<sup>5</sup> The duties and functions of the manual employees consist of various physical services such as preparing or serving food or beverages, carrying luggage, opening doors, cleaning rooms, and other maintenance duties, whereas the duties of the various clerks, accounting employees, and secretaries are primarily clerical in nature. Further, it appears that, in a number of instances, front office clerks are required to give routine directions to manual employees which the latter are expected to follow. The typical case is that of the room clerk summoning a bellman to carry luggage. Front office clerks also receive from the hotel guests various requests for hotel services which these clerks relay to the appropriate department. Finally, there appears to be little, if any, interchange between the clerks and the manual employees.

These differences in the nature of their respective duties and in their respective conditions of employment graphically illustrate that the manual operating employees sought are the Employer's "blue collar" force and that the clerical personnel constitute its "white collar force."<sup>6</sup> Upon consideration of the entire record and consistent with our policy in the analogous area of apartment house units—where we have granted separate units of "blue collar" employees<sup>7</sup>—we are satisfied that the requested unit of the Employer's manual operating personnel excluding clerical employees is appropriate.<sup>8</sup> Specifically, the unit we find appropriate for the purposes of collective bargaining is as follows:

All full-time and regular part-time employees of the Employer at the Regency Hyatt House in Atlanta, Georgia, including telephone department employees, elevator hostesses, the life-guard, Hyatt hostesses, Polaris hostesses, banquet waiters, banquet housemen, assistant garage manager and other garage employees, and the lady in charge of the linen room, but excluding

front office employees, office clerical employees, secretaries to executives, sales department employees, the convention coordinator, and other catering department clerical employees, accounting department employees, personnel department employees, professional employees, security department employees and all other guards, general manager, resident manager, executive manager, personnel director, floor assistant managers (or assistant managers), front office manager, reservations manager, director of guest relations, controller, general auditor, interior auditor, head of the data processing section, chief telephone operator, chief security officer, building superintendent (maintenance department chief engineer), director of sales, sales manager, corporate sales manager, superintendent of service, garage manager, valet manager, executive housekeeper, assistant executive housekeeper, head housekeeper, Clarence Robinzine, catering manager, executive chef, soup chefs, head pastry chef, head butchers, the individual in charge of the employees' cafeteria, executive steward, assistant chief steward, assistant chef in the Kobenhavn Kafe, beverage manager, assistant beverage manager, manager of Kobenhavn Kafe, managers or maitre d's of the Hugo Room, the Polaris Restaurant and the Club Atlantis, Kobenhavn shift supervisors, head hostess in Polaris restaurant, banquet manager, assistant banquet manager, banquet steward, head banquet houseman, banquet captains, room service manager, and all other supervisors as defined in the Act.

Accordingly, the case is remanded to the Regional Director for Region 10 for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date below.<sup>9</sup>

## FOOTNOTES

<sup>1</sup>Over the objection of the Petitioner the Acting Regional Director also included in the unit PBX (telephone) operators, and certain guest relations department employees (principally hostesses and the lifeguard). As Petitioner has not sought review of their unit placement, that issue is not before us for consideration.

<sup>2</sup>The Employer's hotel contains some 800 rooms and has a completely open lobby area rising some 22 stories from the lobby level. There are a "sidewalk" cafe, the "Kobenhavn," and two cocktail lounges, the "Kobenhavn Lounge" and the "Parasol Lounge," in the main lobby, with all these facilities open and exposed to the public areas of the lobby. At the next lower level are a supper club (the "Club Atlantis") and a specialty or gourmet restaurant called "Hugo's." Also at this level is the swimming pool and a number of banquet rooms. "Polaris," another food and beverage facility, is located at the top of the building.

<sup>3</sup>*John Hammonds and Roy Winegardner, Partners, d/b/a 77 Operating Company, d/b/a Holiday Inn Restaurant, supra, 930.*

<sup>4</sup>See, e.g., *E.I. Dupont de Nemours and Company*, 162 NLRB 413.

<sup>5</sup>The front desk clerks wear jackets supplied by the Employer, but these are apparently blazer style and are not uniform coats.

<sup>6</sup>Moreover, notwithstanding the inflexible rule sought to be established in *Arlington*, the Board impliedly recognized, in that decision itself as well as in subsequent decisions, that differences exist between clerical employees and manual operating personnel and that the latter group has a separate community of interest. Thus, the Board has permitted the exclusion of the hotel clerical employees from an otherwise overall unit, where the parties agreed to exclude clerical personnel or where there had been a history of bargaining excluding clerical employees from the unit at the hotel in question or where collective bargaining in the local area established a pattern of excluding clerical employees from hotel units. *Arlington Hotel Company, Inc., supra*, 404; *Water Tower Inn*, 139 NLRB 842; *LaRonde Bar & Restaurant, Inc.*, 145 NLRB 270; *Spinnenweber Builders, Inc., d/b/a Mariemont Inn*, 145 NLRB 79; *Columbus Plaza Motor Hotel*, 148 NLRB 1053. There is no evidence of any local pattern of bargaining in the present case except that in *The Pick Atlanta Corporation d/b/a Albert Pick Motor Inn*, Case 10-RC-7126, decided July 19, 1967, in which the Acting Regional Director found appropriate an overall hotel unit based on the agreement of this same Petitioner and the employer therein.

<sup>7</sup>*Shannon & Luchs*, 162 NLRB 1381; *Shannon & Luchs and D.P.A. Associates*, 166 NLRB 1011. Also see *Denver Athletic Club*, 164 NLRB 677, where the Board found appropriate a unit of the manual employees of the hotel and restaurant facilities of a combined hotel-athletic club enterprise.

<sup>8</sup>The feasibility of such a unit is not only demonstrated by these cases in which the Board—albeit for different reasons from those present here—has found appropriate a hotel unit excluding clerical employees, but also by the testimony of Petitioner's International director of organization, Paulson, with respect to his union's experience in the organization of hotel units. Paulson stated that clerical employees are excluded from the great majority of the units of hotel operating employees represented by various sister locals of Petitioner across the United States. Paulson further testified that in a number of instances where clerks are included in units of operating employees represented by these sister locals, the clerks were added to preexisting units which excluded them. Cf. *Allied Stores of New York d/b/a Stern's Paramus*, 150 NLRB 799, 803, 804; *Saks and Company*, 160 NLRB 682, enfd. 385 F.2d 301 (C.A.D.C.).

<sup>9</sup>An amended election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 10 within 7 days after the date of this Decision on Review and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear, Inc.*, 156 NLRB 1236.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**HYATT CORPORATION d/b/a  
ORLANDO HYATT HOUSE 1/  
*Employer***

**and**

**HOTEL, MOTEL AND RESTAURANT  
EMPLOYEES AND BARTENDERS UNION,  
LOCAL 737, AFL-CIO  
*Petitioner***

**Case No. 12-RC-5344**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization involved claims to represent certain employees of the Employer.



4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 3/

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at the Orlando Hyatt House; but *excluding* office clerical employees, casual employees, managerial and management intern employees, guards and supervisors as defined in the Act. 4/

#### DIRECTION OF ELECTION 5/

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date below, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by HOTEL, MOTEL



## AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, LOCAL 737, AFL-CIO.

### LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge, Subregion, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Room 706, 500 Zack St., Federal Bldg., P.O. Box 3322, Tampa, Florida 33601, on or before September 29, 1977. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by October 5, 1977.

Dated *September 22, 1977*

at *Tampa, Florida*

/s/ Harold A. Boire  
Regional Director, Region 12

## FOOTNOTES

- 1/ The name of the Employer appears as amended at the hearing.
- 2/ The Employer is a Delaware corporation and operates the Orlando Hyatt House near Orlando, Florida. During the past 12 months, the Orlando Hyatt House had gross revenues in excess of \$500,000 and during the same period, purchased supplies valued in excess of \$50,000 directly from outside the State of Florida. In accord with the stipulation of the parties, I find that the Employer meets the Board's jurisdictional standards.
- 3/ The Employer has filed a motion to dismiss this petition for lack of jurisdiction. While an election was conducted by this office among employees in the bargaining unit on July 29, 1976, and the petition in this case was filed on July 18, 1977, the Act prohibits the holding of an election within a 12-month period after a former election but does not preclude the Board from processing petitions filed shortly before the end of the 12-month period. *The Stickless Corporation*, 115 NLRB 979.

Whether or not the petition was filed in accord with the Petitioner's successful organization, the unit found appropriate herein is that contended to be appropriate by the Employer, and not on the basis of Petitioner's organization.

With regard to Petitioner's showing of interest, issues of taint are a matter of administrative investigation, and the Employer has already been notified by the undersigned that investigation does not reveal that Petitioner's showing of interest was tainted. I therefore, deny Employer's Motion to Dismiss for lack of jurisdiction.

- 4/ The Orlando Hyatt House consists of 946 guest rooms, a large mall with shops and other guest services, a number of restaurants and a pub, and an area for conventions and/or banquets.

Petitioner seeks a bargaining unit of employees in the Housekeeping Department (about 122) while the Employer contends that the appropriate bargaining unit must include employees throughout its operations (about 360). There is not bargaining history for any of these employees. Pursuant to a stipulation of the parties, the undersigned held an election among the unit found appropriate herein on July 29, 1976 (12-RC-5112).

The Employer has a number of departments in its operations, including housekeeping, food and beverage, front desk, maintenance, and many others. Each department has a staff of supervisors, and employees are generally assigned to work regularly in a single department.

However, the Employer at this location has a regular practice of transferring employees between the various departments on a temporary basis when needed, and on a permanent basis when there are job openings. It is clear from the record that temporary and permanent transfers between departments is a regular occurrence and a number of these transfers involve housekeeping employees. During the slow seasons of tourism, the Employer performs much of its catch-up maintenance work and employees from all departments, including housekeeping, are assigned to the maintenance department during these periods. During the times when there is a large convention and/or banquets being held at the hotel facilities, employees from other departments will be temporarily assigned to help the small banquet department in setting up facilities for these events. It is clear from both the records submitted by the Employer and the testimony of employees presented by the Petitioner, that transfers of housekeeping employees is not an unusual situation.

Housekeeping department employees work together with employees in other departments. For example, there are maintenance employees assigned to each cluster who work in close contact with housekeeping employees, and there are housekeeping employees assigned to the Mall area

who work in close contact with other employees working in the Mall. The housekeeping department has only a few employees on the late shifts and during these shifts, employees from other departments regularly perform housekeeping work.

All employees receive the same fringe benefits and use the same cafeteria for their meals. The Employer has several committees made up of employees from all departments for safety reasons, and employees on these committees are trained together and meet regularly.

Upon consideration of the above facts and entire record, especially the regular transfers and working contact between departments, I find that the Housekeeping Department employees do not have a community of interest different from those of other department employees, and do not constitute an appropriate unit. I find that the only appropriate unit includes employees throughout Employer's operations at the Orlando Hyatt House, with the exclusions noted above. *Holiday Inn Southwest*, 202 NLRB 781; *Days Inn of America*, 210 NLRB 1035.

The Employer employs a number of part-time employees, with many of these employees on a call-in basis, while some may work on a regular schedule. The large majority of call-in employees are employees that serve banquets, and a number of housekeeping employees. I find that any part-time employee who works each week on a regular schedule for eight hours or more is a regular part-time employee and included in the bargaining unit. With regard to the employees who are on call, their employment depends on Employer's fluctuating business. I find that those who have worked an average of six hours per week over the 13-week period immediately preceding the eligibility date established herein, have established themselves as having a continuing interest of employment with the Employer and are eligible to vote in the election directed herein, while those who do not meet this standard are not eligible to vote. *First Mortgage Investors, a Trust d/b/a Cranston Hilton Inn*, 230 NLRB No. 20.

The Employer would include and the Petitioner would exclude Employer's management interns (about 7). These employees are generally hired from outside the organization and have a program through which they work in all departments throughout Employer's operations. They have a training coordinator and the program is part of Hyatt Corporation's national policy. After the conclusion of the training, the trainee may apply for a permanent job at any Hyatt House and several have secured a job at another Hyatt House. While in each department, they work closely with department managers and at times will serve as supervisors. There are classes for these interns and employees from various departments may attend these classes on a volunteer basis to gain advancement in their various jobs. However, these employees are not on a regular schedule for training and do not work under the supervision of the training coordina-

tor. Upon consideration of the above facts and entire record, I find that the management interns are given broad experience with the object of making them supervisors or management, and are excluded from the bargaining unit found appropriate herein. *May Department Stores*, 175 NLRB 514, 517.

The parties have stipulated that employees holding the following jobs are supervisors as defined in Section 2(11) of the Act, as they have the authority to hire or fire employees, effectively recommend such action and/or direct the work of other employees using independent judgement:

- Controller
- Assistant Controller
- Food & Beverage Controller
- Regional V.P. & General Manager
- Administrative Assistant (Administrative & General)
- Data Processing Manager EECO
- Data Processing Manager IBM
- Convention Service Manager
- Assistant Convention Service Manager
- Beverage Manager
- Director of Catering
- Catering Manager
- Banquet Manager
- Set Up Manager
- Director of Engineering
- Chief Engineer
- Landscaping Manager
- Executive Assistant Manager—Food & Beverage
- Purchasing Director
- Front Office Manager
- Assistant Front Office Manager
- Guest Services Manager
- Executive Housekeeper
- Assistant Executive Housekeeper
- Executive Chef
- Sous Chef
- Banquet Sous Chef
- Pastry Chef
- PBX Supervisor
- Director of Audiovisual Productions
- Personnel Manager
- Employment Manager
- Training Coordinator
- Restaurants Operation Manager
- A.M. Gatsby's & Bus Stop Supervisor

P. M. Gatsby's & Bus Stop Supervisor  
Big Bicycle Supervisor  
Executive Assistant Manager—Rooms  
Assistant Manager/M.O.D.  
Chief of Security  
Transportation Supervisor  
Director of Sales  
Sales Manager/Group & Convention  
Sales Manager/Tour & Agency  
Executive Steward  
Assistant Executive Steward  
F & B Cashier Supervisor  
Banquet Beverage Supervisor  
Director of Personnel

Employer's credit manager and public relations manager are no longer supervisors as they no longer have employees under their direction. Both of these managers are salaried and are involved in making policy decisions. I find that the credit manager and public relations manager are part of management, their community of interest is with other management employees, and they are excluded from the unit found appropriate herein.

In the housekeeping department there are 13 cluster supervisors and 4 senior cluster supervisors, with one senior cluster supervisor assigned to each cluster of rooms. The parties agree that the cluster supervisors are lead employees. The Employer contends that the senior cluster supervisors are supervisors within the meaning of the Act, while Petitioner contends that they are also lead employees. Both cluster and senior cluster supervisors basically perform the work of an inspectress, checking the rooms after they have been made. The senior cluster supervisor is in charge of the supplies in her area and will pass out work assignments. The senior cluster supervisor's minimum pay is 25¢ an hour more than the other cluster supervisors but the highest pay is the same for both job classifications. While the senior cluster supervisor is looked upon as the highest ranking employee working in the cluster area, and may give instructions to other employees, it appears from the record that their instructions are of a routine nature. They do not have the authority to hire or fire employees, effectively recommend such action, or change the status of other employees. Upon consideration of the above facts and entire record, I find that the senior cluster supervisors are lead employees and included in the bargaining unit.

*Michael Timothy Costello* is the night supervisor at the front desk. Petitioner would exclude him as a supervisor while Employer contends that he is a lead employee and should be included in the bargaining unit. Mr. Costello testified that he has 4 desk employees working with him on his

shift and that he has the authority to have these people work overtime, excuse them for tardiness, and let them off early for individual needs. Upon consideration of the above testimony, I find that he is a supervisor within the meaning of the Act and excluded from the bargaining unit found appropriate herein.

- 5/ Although the unit I find appropriate herein is broader than that sought by the Petitioner, I shall not dismiss the petition as Petitioner has not disclaimed interest in such a unit. An election is, therefore, directed, subject to the undersigned ascertaining that Petitioner has made an adequate showing of interest among employees in the broader unit found herein. If Petitioner does not now wish to participate in an election in the unit found appropriate herein, I shall permit it to withdraw its petition without prejudice upon written notice to the Regional Director of Region 12 within 10 days from the date of this decision.



## **CERTIFICATE OF SERVICE**

I, Arch Stokes, do hereby certify that I have this date served three (3) copies of the foregoing Supplemental Appendix to Petition upon the following persons by depositing said copies in the United States Mail, properly posted and addressed to:

The Honorable John C. Truesdale  
Executive Secretary  
National Labor Relations Board  
1717 Pennsylvania Avenue, N.W.  
Room 701  
Washington, D.C. 20570  
ATTN: JOLANE A. FINDLEY, ESQUIRE

The Honorable Rex E. Lee  
Solicitor General  
U.S. Department of Justice  
9th and Pennsylvania  
Washington, D.C. 20570

This \_\_\_\_\_ day of December, 1983.

---

**ARCH STOKES**  
Counsel for Hyatt Hotels Corporation

No. 83-849

JAN 23 1984

**In the Supreme Court of the United States**

ALEXANDER L. STEVAS  
CLERK

OCTOBER TERM, 1983

HYATT HOTELS CORPORATION, dba  
HYATT REGENCY NEW ORLEANS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD IN OPPOSITION

REX E. LEE

*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

WILLIAM A. LUBBERS  
*General Counsel*

JOHN E. HIGGINS, JR.  
*Deputy General Counsel*

ROBERT E. ALLEN  
*Associate General Counsel*

NORTON J. COME  
*Deputy Associate General Counsel*

LINDA SHER  
*Assistant General Counsel*

SCOTT MEZA  
*Attorney*  
*National Labor Relations Board*  
*Washington, D.C. 20570*

### **QUESTION PRESENTED**

Whether the Board's determination that petitioner's housekeeping, laundry/valet, concierge and bell staff employees constituted an appropriate unit for purposes of collective bargaining was a permissible exercise of the Board's discretion under Section 9(b) of the National Labor Relations Act, 29 U.S.C. 159(b).

## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement .....	2
Argument .....	5
Conclusion .....	9

## TABLE OF AUTHORITIES

### Cases:

<i>Anaheim Operating, Inc.</i> , 252 N.L.R.B. 959, pet. for review denied, 676 F.2d 708 .....	7
<i>Arcadian Shores, Inc.</i> , 229 N.L.R.B. 806, enforced, 580 F.2d 118 .....	7
<i>Arlington Hotel Co.</i> , 126 N.L.R.B. 400 .....	6
<i>Atlas Hotels, Inc. v. NLRB</i> , 519 F.2d 1330 .....	7
<i>Beck Corp., v. NLRB</i> , 590 F.2d 290 .....	7
<i>Hotel Equities</i> , 171 N.L.R.B. 1347 .....	6
<i>Hyatt Regency</i> , 256 N.L.R.B. 1099, enforced, 692 F.2d 763 .....	6-7
<i>John Hammonds &amp; Roy Winegardner</i> , 160 N.L.R.B. 927, enforced, 387 F.2d 646 .....	6
<i>NLRB v. Alterman Transport Lines, Inc.</i> , 465 F.2d 950 .....	7, 8

## IV

### Page

#### Cases—Continued:

<i>NLRB v. Puritan Sportswear Corp.</i> , 385 F.2d 142 .....	7
<i>Victoria Station, Inc. v. NLRB</i> , 586 F.2d 672 .....	7
<i>Westward-Ho Hotel Co. v. NLRB</i> , 437 F.2d 1110 .....	7

#### Statute:

##### National Labor Relations Act, 29 U.S.C. (& Supp. V) 151 *et seq.* :

§ 8(a)(1), 29 U.S.C. 158(a)(1) .....	5
§ 8(a)(5), 29 U.S.C. 158(a)(5) .....	5
§ 9(c), 29 U.S.C. 159(c) .....	2

# ***In the Supreme Court of the United States***

OCTOBER TERM, 1983

---

No. 83-849

HYATT HOTELS CORPORATION, dba  
HYATT REGENCY NEW ORLEANS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE ELEVENTH CIRCUIT*

---

**BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD IN OPPOSITION**

---

## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-1g) is reported at 709 F.2d 715 (table). The decision and order of the National Labor Relations Board (Supp. App. 4a-4p)<sup>1</sup> are reported at 260 N.L.R.B. 534. The decision of the Regional Director (Supp. App. 5a-5o) is not reported.

## **JURISDICTION**

The judgment of the court of appeals was entered on June 21, 1983. A petition for rehearing was denied on August 25, 1983 (Pet. App. 2a-2b). The petition for a writ of certiorari was filed on November 23, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

---

<sup>1</sup>"Supp. App." refers to the Supplemental Appendix to the petition in this case.

## STATEMENT

1. Petitioner operates a luxury hotel in New Orleans, Louisiana (Supp. App. 4f). The hotel's operations are separated into nine distinct administrative divisions ranging from Convention Services to Public Relations (*id.* at 5e n.4). The Rooms Division, which employs approximately 378 of the hotel's 1,100 employees, is divided into 7 separate departments. The housekeeping and laundry/valet departments, along with the bell staff and concierge departments, are part of the Rooms Division of the hotel (*ibid.*).

In March 1981, United Labor Unions, Local 100, petitioned the Board to hold a representation election pursuant to Section 9(c) of the National Labor Relations Act, 29 U.S.C. 159(c), among the full-time and regular part-time employees in the housekeeping and laundry/valet departments of the hotel (Supp. App. 5e-5f n.4). Petitioner opposed the Union's petition, urging that the only appropriate unit consisted of all full and part-time employees at the hotel, excluding professional, supervisory and confidential employees and guards (*id.* at 5e n.4).

The Regional Director found that a unit of all full-time, regular employees in the hotel's housekeeping, laundry/valet, concierge and bell staff departments, excluding all front office, pbx (telephone attendants), reservations, food and beverage, convention services, engineering, accounting, sales personnel, public relations and security personnel, was an appropriate unit for collective bargaining (Supp. App. 5b, 5f n.4).<sup>2</sup> The Regional Director found that the other departments in the Rooms Division—the front desk,

---

<sup>2</sup>The Regional Director originally included regular part-time employees in the unit. After a hearing, however, the Regional Director found that petitioner did not employ permanent part-time employees and issued a Supplemental Decision and Direction of Election excluding regular part-time employees from the unit description (Supp. App. 4c-4d).



pbx and reservations—"are separately supervised and perform work substantially different in nature from unit personnel" (*id.* at 5h n.6).

The Regional Director found that the unit employees are all unskilled workers who primarily perform simple, manual tasks requiring limited training (Supp. App. 5g n.5). Specifically, the employees in the housekeeping department clean the hotel's rooms and public areas; and the laundry/valet personnel clean hotel uniforms, clean and deliver linen to the rooms and provide a valet service (*ibid.*). The employees in the concierge department provide information to guests and routinely assist housekeeping by cleaning guest rooms on the 27th floor and lobby (*id.* at 5h n.5) and the bell staff department employees carry luggage, move furniture and perform routine housekeeping chores (*ibid.*). By contrast, the other employees in the Rooms Division—the front desk, pbx and reservation departments personnel—perform office clerical functions requiring a higher level of skill and training (*id.* at 5h-5i n.6). Similarly, employees in the Accounting, Sales, Public Relations and Personnel Divisions do primarily clerical, public relations and personnel work (*id.* at 5k n.6). The Security, Engineering and Food and Beverage Division employees do perform manual tasks, but the Regional Director found that their work, which includes protection of property, skilled mechanical repairs and preparation of meals, is very different from work done by unit employees (*id.* at 5i-5k n.6).

The Regional Director also found a high degree of integration of function and contact among the unit employees that did not exist between unit and non-unit employees (Supp. App. 5g-5h n.5). Thus, laundry/valet employees deliver linen to housekeepers every day and help clean guest rooms when housekeeping is understaffed (*id.* at 5g n.5).

Concierge employees are in daily contact with housekeeping and laundry/valet employees (*id.* at 5h n.5). Bell staff personnel also have daily contact with other unit members and assist the housekeeping department by cleaning work areas and the hotel lobby and performing housekeeping services when housekeeping personnel finish their evening shift (*ibid.*).

By contrast, employees in the front desk, pbx and reservations departments of the Rooms Division spend most of their time in their work areas and only infrequently assist in performing unit work (Supp. App. 5i n.6). Moreover, unit employees seldom perform tasks assigned to the non-unit employees in the Rooms Division. The Regional Director found that the contacts between unit and non-unit employees were "incidental and limited in nature due to size and specialization of services offered to guests" and "[did] not warrant a finding that the only appropriate unit is an overall unit" (*id.* at 5k n.6).<sup>3</sup>

In limiting the size of the bargaining unit, the Regional Director took into consideration that in 1977 a unit including the hotel's banquet, beverage, convention services, concierge, engineering, housekeeping, kitchen, laundry/valet, pbx, restaurant, room service, service department, stadium clubs and steward employees was found to be appropriate.<sup>4</sup> The Regional Director noted that in the instant case the

---

<sup>3</sup>The Regional Director found only a small number of permanent and temporary job transfers between unit and non-unit employees (Supp. App. 5k-5m n.6). In fact, most of these transfers occurred within divisions and departments performing related services and not into and out of the departments found to constitute an appropriate unit (*ibid.*).

<sup>4</sup>The 1977 unit was less inclusive than the all-employee unit which petitioner sought here. It excluded "all accounting, front office, reservation, computer, purchasing, sales, [and] secretarial employees" (Supp. App. 6b (footnotes omitted)). The 1977 unit determination involved a different union, which lost the ensuing election. There is therefore no history of collective bargaining at the hotel.

record evidence gave a more detailed description of the hotel's operations than was available in the 1977 case. The new evidence showed infrequent and insignificant interchange or transfers between unit and non-unit employees and indicated a close integration in function among unit employees. Supp. App. 5b-5g nn. 1-4.

2. The Board denied petitioner's request to review the appropriateness of the Regional Director's unit determination (Pet. 2-3), and the Union won the ensuing election ordered by the Regional Director. Upon petitioner's refusal to bargain, the Union filed an unfair labor practice charge against petitioner, and the Board held that petitioner's refusal to bargain violated Section 8(a)(5) and (1) of the Act, 29 U.S.C. 158(a)(5) and (1), and ordered petitioner to bargain with the Union (Supp. App. 4d-4k, 4l).

The court of appeals enforced the Board's order (Pet. App. 1a-1g). The court found that substantial evidence supported the Board's determination that the designated unit had a community of interest that made it an appropriate unit for collective bargaining purposes (*id.* at 1d). The court rejected petitioner's claim that the Board had a policy of certifying units in luxury hotels that included all, or even all manual, employees (*id.* at 1e). Finally, the court held that the Board had adequately explained why a unit different from the one that had been approved in 1977 was nevertheless appropriate in 1981 (*id.* at 1f).

#### ARGUMENT

Petitioner argues (Pet. 11-29) that the Board abused its discretion by failing to certify all of the manual employees at the hotel as the only appropriate unit for collective bargaining. Petitioner contends that the certification decision conflicts with established board policy requiring certification of "all employee" units<sup>5</sup> in luxury, convention hotels;

---

<sup>5</sup>It is not clear whether petitioner's reference to an "all employee" unit includes office clerical employees. Petitioner appears here to be using

that the decision fails adequately to explain why the 1977 certification of "all employees" was not binding on the Regional Director in 1981; and that the certification decision is unsupported by substantial evidence. None of these contentions has merit.

1. Petitioner contends (Pet. 11, 25-27) that it is the Board's policy to certify only comprehensive units containing all operational employees in the luxury hotel industry and therefore the unit determination here is arbitrary. Contrary to petitioner's assertion, the Board has not had a policy of certifying all operating personnel in a hotel or motel since 1967, when it overruled *Arlington Hotel Co.*, 126 N.L.R.B. 400 (1960). See *John Hammonds & Roy Winegardner*, 160 N.L.R.B. 927, 928 (1966), enforced, 387 F.2d 646 (4th Cir. 1967). Instead, the Board has made clear that in all hotel cases its

intention is to apply \* \* \* the general criteria used for determining units in other industries and to make unit determinations after weighing all the factors present in each case, such as the distinctions in the skills and functions of particular employee groupings, their separate supervision, the employer's organizational structure, and differences in wages and hours.

*Hotel Equities*, 171 N.L.R.B. 1347, 1348 (1968).

Consistent with this case-by-case approach, the Board has often found that units smaller than all operating employees were appropriate for both petitioner's and other luxury hotels. See, e.g., *Hyatt Regency*, 256 N.L.R.B. 1099

---

the term to refer to a unit of "manual" employees, excluding clerical employees (Pet. 25). However, it contended before the Board that only a unit including all its employees, including office clerical workers, would be appropriate.

(1981), enforced, 692 F.2d 763 (9th Cir. 1982) (unit composed solely of maintenance and engineering employees); *Anaheim Operating, Inc.*, 252 N.L.R.B. 959 (1980), pet. for review denied, 676 F.2d 708 (9th Cir. 1982) (unit composed solely of engineering employees); *Arcadian Shores, Inc.*, 229 N.L.R.B. 806 (1977), enforced, 580 F.2d 118 (4th Cir. 1978) (unit composed solely of housekeeping, laundry and bell staff employees which excluded restaurant employees).<sup>6</sup>

2. There is no merit to petitioner's contention (Pet. 23-24) that the Board violated petitioner's "Administrative Due Process" rights by certifying a bargaining unit smaller than the unit found to be appropriate for the hotel in 1977. The Board is not bound by a prior unit determination; it is free to alter the unit on the basis of new evidence so long as it explains the reason for its departure. See *NLRB v. Alterman Transport Lines, Inc.*, 465 F.2d 950, 952 (5th Cir. 1972); *NLRB v. Puritan Sportswear Corp.*, 385 F.2d 142, 143 (3d Cir. 1967); see also *Victoria Station, Inc. v. NLRB*, 586 F.2d 672, 674-675 (9th Cir. 1978). The Regional Director expressly found that the parties in 1981 had submitted

---

<sup>6</sup>Petitioner is incorrect in its assertion (Pet. 26) that the Ninth Circuit follows an established policy that, absent a contrary bargaining history, an all-manual employee unit is the only appropriate bargaining unit in the luxury hotel industry. In *Atlas Hotels, Inc. v. NLRB*, 519 F.2d 1330, 1334 (1975), the court upheld the finding that a unit of bakery employees was appropriate and expressly noted that a less than all manual employee unit is appropriate in the hotel industry when the enterprise is not highly integrated and a smaller unit is consistent with the community of interest among those particular employees. The court explained (*id.* at 1335) that *Westward-Ho Hotel Co. v. NLRB*, 437 F.2d 1110 (9th Cir. 1971), was not controlling because there the unit chosen was not supported by community of interest factors, but only by the extent of organization. See also *Beck Corp. v. NLRB*, 590 F.2d 290, 293 (9th Cir. 1978).

much more extensive evidence concerning the hotel's operations than in the 1977 case and that, on the basis of this new evidence, a unit composed of the housekeeping, laundry/valet, concierge and bell staff employees was appropriate.

Furthermore, in the 1977 case the petitioning union *sought to include* the banquet, beverage, convention services, engineering, kitchen, pbx and steward employees in the unit, whereas the Union in the instant case *did not*. Consequently, the Board's determination in the 1977 case was only that the unit petitioned-for was *an* appropriate unit within the range of appropriate units. It never reached the issue of whether another smaller unit might also be appropriate, nor did it foreclose the possibility of such a ruling if, as here, sufficient evidence were presented to support such a finding. See *NLRB v. Alterman Transport Lines, Inc.*, 465 F.2d at 952.

3. Petitioner's challenge ultimately reduces to whether the record supports the Board's finding, upheld by the court of appeals, that the employees of the housekeeping, laundry/valet, concierge and bell staff departments share a separate community of interest from the other employees at the hotel.<sup>7</sup> This fact-bound question does not warrant review by this Court.<sup>8</sup>

---

<sup>7</sup>Nothing is added by petitioner's contention (Pet. 24-25) that the employees who had been included in the 1977 unit, but were excluded from the 1981 unit, should have been allowed to cast challenged ballots. If those employees were properly excluded from the 1981 unit, they were not entitled to vote in the election.

<sup>8</sup>Petitioner suggests (Pet. 27-28) that the Regional Director failed to weigh the relative importance of each of the factors he considered in determining an appropriate bargaining unit. The record shows, however, that the Regional Director carefully examined each relevant factor in his community of interest analysis and found that the great majority of the factors favored the bargaining unit found (Supp. App. 5h-5/n.6). Where the Regional Director isolated factors suggesting that a larger

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

**REX E. LEE**  
*Solicitor General*

**WILLIAM A. LUBBERS**  
*General Counsel*

**JOHN E. HIGGINS, JR.**  
*Deputy General Counsel*

**ROBERT E. ALLEN**  
*Associate General Counsel*

**NORTON J. COME**  
*Deputy Associate General Counsel*

**LINDA SHER**  
*Assistant General Counsel*

**SCOTT MEZA**  
*Attorney*  
*National Labor Relations Board*

**JANUARY 1984**

---

unit might also be appropriate, he carefully and explicitly assessed their relative importance and concluded that those factors did not render the chosen unit inappropriate (*id.* at 5i-5m n.6). No more was required of him.